No. 17-21

IN THE

Supreme Court of the United States

FANE LOZMAN,

Petitioner,

v.

CITY OF RIVIERA BEACH, FLORIDA,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari Filed: June 28, 2017
Certiorari Granted: November 13, 2017

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH)

Lozman v. City of Riviera Beach, et al.
Civil Case No. #: 9:08-cv-80134-DTKH

RELEVANT DOCKET ENTRIES

#	Date	Docket Text
1	02/08/2008	COMPLAINT against all defendants Filing fee $ 350. Receipt#: 723714, filed by Fane Lozman. (mg) (Entered: 02/11/2008)
42	11/08/2010	Renewed MOTION to Reopen Case by Fane Lozman. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Bowling, Robert) (Entered: 11/08/201
70	10/12/2011	ORDER OF FINAL DISMISSAL WITH PREJUDICE & CLOSE-OUT. Signed by Judge Daniel T. K. Hurley on 10/12/11. (lr) (Entered: 10/12/2011)
149	06/11/2013	MANDATE of USCA, we REVERSE the district court's dismissal of Appellant's amended complaint and remand for further proceedings not inconsistent with this opinion as to 72 Notice of Appeal, filed by Fane Lozman; Date Issued: 6/11/13; USCA Case

		Number: 11-15448-CC (hh) (Entered: 06/11/2013)
151	07/02/2013	ORDER Setting Trial Date & Discovery Deadlines, Referring Case to Mediation & Referring Discovery to United States Magistrate Judge: (Jury Trial set for 3/3/2014 before Judge Daniel T. K. Hurley., Calendar Call set for 2/20/2014 08:30 AM in West Palm Beach Division before Judge Daniel T. K. Hurley Signed by Judge Daniel T. K. Hurley on 7/2/2013. (cbr) (Entered: 07/03/2013)
175	10/01/2013	ANSWER and Affirmative Defenses to Complaint with Jury Demand re Amended Complaint [42-1] by City of Rivieria [sic] Beach. (Bedard, Benjamin) (Entered: 10/01/2013)
217	11/18/2013	MOTION for Leave to File a Second Amended Compalint [sic] and Incorporated Memorandum of Law by Fane Lozman. (Attachments: # 1 Exhibit 1-Second Amended Complaint, # 2 Exhibit 2, # 3 Exhibit 3)(asl) (Entered: 11/18/20
218	11/21/2013	VACATED by DE# 266 . ORDER granting 217 Motion for Leave to File Second Amended Complaint. Plaintiff must separately re-file

		the Amended Complaint within 3 days, expedite service of process and file executed returns by December 4, 2013. Previously named defendants shall respond to Second Amended Complaint by December 4, 2013. Signed by Judge Daniel T. K. Hurley on 11/21/13. (lr) Modified to reflect "vacated" on 12/27/2013 (wc).(Entered: 11/21/2013)
222	11/22/2013	STRICKEN by DE# 266. SECOND AMENDED COMPLAINT against Michael Brown, George Carter, City of Riviera Beach, Norma Duncombe, Ann Iles, Vanessa Lee, Gloria Shuttlesworth, Elizabeth Wade, Dawn Pardo, Cedrick Thomas, Judy Davis, Bruce Guyton, Riviera Beach Community Redevelopment Agency filed in response to Order Granting Motion for Leave, filed by Fane Lozman. (asl) Modified to add defendant on 11/22/2013 (asl). Modified to reflect "stricken" on 12/27/2013 (wc). (Entered: 11/22/2013)
244	12/10/2013	ANSWER and Affirmative Defenses to Complaint with Jury Demand re Second Amended Complaint [DE 222] by Riviera Beach Community

		Redevelopment Agency. Attorney Benjamin Lawrence Bedard added to party Riviera Beach Community Redevelopment Agency (pty:dft). (Bedard, Benjamin) (Entered: 12/10/2013
325	01/17/2014	Order Granting Plaintiff's Oral Motion to file attached SECOND AMENDED COMPLAINT against City of Riviera Beach. (lr) Modified on 1/17/2014 (to reflect Second Amended Complaint (lr). (Entered: 01/17/2014)
329	01/27/2014	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by City of Riviera Beach. (Bedard, Benjamin) (Entered: 01/27/2014)
519	08/19/2014	ORDER DENYING IN PART AND GRANTING IN PART 383 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT & DENYING 408 PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT. Signed by Judge Daniel T. K. Hurley on 8/19/14. (lr) (Entered: 08/19/2014)
666	11/04/2014	ORDER Granting in part and Denying in part 557 Defendant's Motion in Limine to Exclude Evidence Relating to Admiralty Proceeding, Arrest and Seizure of

		Floating Home & Damages to Floating Home. Signed by Judge Daniel T. K. Hurley on 11/4/14. (lr) (Entered: 11/04/2014)
728	12/17/2014	JURY VERDICT. (cbr) (Entered: 12/17/2014)
729	12/18/2014	TRANSCRIPT of Jury Trial held on 12/3/2014 before Judge Daniel T. K. Hurley, 168 pages, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/12/2015. Redacted Transcript Deadline set for 1/23/2015. Release of Transcript Restriction set for 3/23/2015. (gbx) (Entered: 12/18/2014)
731	12/18/2014	FINAL JUDGMENT in favor of City of Rivieria Beach against Fane Lozman. Signed by Judge Daniel T. K. Hurley on 12/18/14. (lr) (Entered: 12/18/2014
732	12/19/2014	Jury Notes, Court Jury Instruction and Seating Chart (dj) (Entered: 12/19/2014)

737	01/12/2015	Rule 59(a)(1)(A) MOTION for New Trial, MOTION to Reassign Case by Fane Lozman. (ls) (Entered: 01/13/2015)
748	02/06/2015	Notice of Appeal as to 659 Order Adopting Report and Recommendations, 281 Order on Motion to Disqualify Judge, 739 Order on Motion for New Trial, 731 Judgment by Fane Lozman. Filing fee $ 505.00 Receipt #: 94457. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (hh) (Entered: 02/09/2015)
768	05/12/2015	TRANSCRIPT of Trial Day 1 held on 11-12-2014 before Judge Daniel T. K. Hurley, Volume Number 1 of 19, 1-298 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber

		before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
769	05/12/2015	TRANSCRIPT of Trial Day 2 held on 11-13-2014 before Judge Daniel T. K. Hurley, Volume Number 2 of 19, 1-260 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
770	05/12/2015	TRANSCRIPT of Trial Day 3 held on 11-17-2014 before Judge Daniel T. K. Hurley, Volume Number 3 of 19, 1-267 pages, re:

		748 Notice of Appeal,, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
771	05/12/2015	TRANSCRIPT of Trial Day 4 held on 11-18-2014 before Judge Daniel T. K. Hurley, Volume Number 4 of 19, 1-240 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript

		Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
772	05/12/2015	TRANSCRIPT of Trial Day 5 held on 11-20-2014 before Judge Daniel T. K. Hurley, Volume Number 5 of 19, 1-296 pages, re: 748 Notice of Appeal,, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
773	05/12/2015	TRANSCRIPT of Trial Day 6 held on 11-24-2014 before Judge Daniel T. K. Hurley, Volume Number 6 of 19, 1-302 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the

court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

774 05/12/2015 TRANSCRIPT of Trial Day 7 held on 11-25-2014 before Judge Daniel T. K. Hurley, Volume Number 7 of 19, 1-230 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov.
Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

775	05/12/2015	TRANSCRIPT of Trial Day 8 held on 11-26-2014 before Judge Daniel T. K. Hurley, Volume Number 8 of 19, 1-122 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015
776	05/12/2015	TRANSCRIPT of Trial Day 9 held on 12-1-2014 before Judge Daniel T. K. Hurley, Volume Number 9 of 19, 1-269 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of

Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

777 05/12/2015 TRANSCRIPT of Trial Day 10 held on 12-2-2014 before Judge Daniel T. K. Hurley, Volume Number 10 of 19, 1-249 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

778 05/12/2015 TRANSCRIPT of Trial Day 11 held on 12-3-2014 before Judge Daniel T. K. Hurley, Volume Number 11 of 19, 1-226 pages, re: 748 Notice of Appeal, Court

		Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
779	05/12/2015	TRANSCRIPT of Trial Day 12 held on 12-4-2014 before Judge Daniel T. K. Hurley, Volume Number 12 of 19, 1-214 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015.

		Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
780	05/12/2015	TRANSCRIPT of Trial Day 13 held on 12-8-2014 before Judge Daniel T. K. Hurley, Volume Number 13 of 19, 1-278 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
781	05/12/2015	TRANSCRIPT of Trial Day 14 held on 12-9-2014 before Judge Daniel T. K. Hurley, Volume Number 14 of 19, 1-263 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or

purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

782 05/12/2015 TRANSCRIPT of Trial Day 15 held on 12-10-2015 before Judge Daniel T. K. Hurley, Volume Number 15 of 19, 1-267 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov.
Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

783 05/12/2015 TRANSCRIPT of Trial Day 16 held on 12-11-2014 before Judge

Daniel T. K. Hurley, Volume Number 16 of 19, 1-207 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

784 05/12/2015 TRANSCRIPT of Trial Day 17 held on 12-12-2014 before Judge Daniel T. K. Hurley, Volume Number 17 of 19, 1-141 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through

PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

785 05/12/2015 TRANSCRIPT of Trial Day 18 held on 12-15-2014 before Judge Daniel T. K. Hurley, Volume Number 18 of 19, 1-230 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)

786 05/12/2015 TRANSCRIPT of Trial Day 19 held on 1212-16-2014 before Judge Daniel T. K. Hurley, Volume Number 19 of 19, 1-62 pages, re: 748 Notice of Appeal, Court Reporter: Gizella Baan-Proulx, 305-523-5294 / Gizella

		Baan-Proulx@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (gbx) (Entered: 05/12/2015)
805	09/11/2015	NOTICE of Filing Trial Exhibits for Purposes of Appeal by Fane Lozman (cbr) (Main Document 805 replaced on 9/16/2015) (vp). (Entered: 09/14/2015)
820	01/18/2016	NOTICE by City of Rivieria Beach of Filing Trial Exhibits for Purposes of Appeal (Attachments: # 1 Exhibit Exhibits 1-8, # 2 Exhibit Exhibit 9, # 3 Exhibit Exhibit 10, # 4 Exhibit Exhibit 11, # 5 Exhibit Exhibit 12) (Bedard, Benjamin) (Entered: 01/18/2016)

U.S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Fane Lozman v. City of Riviera Beach, et al.
Case No. 15-10550

RELEVANT DOCKET ENTRIES

#	Date	Docket Text
BL-1	02/09/2015	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Fane Lozman on 02/06/2015. Fee Status: Fee Paid.
BL-24	09/21/2015	Appellant's brief filed by Fane Lozman. (ECF: Raymond Taseff)
BL-40	01/20/2016	Appellee's Brief filed by Appellee City of Riviera Beach. (ECF: Benjamin Bedard)
BL-52	03/01/2016	Reply Brief filed by Appellant Fane Lozman. (ECF: Raymond Taseff)
BL-59	02/28/2017	Judgment entered as to Appellant Fane Lozman.
BL-60	02/28/2017	Opinion issued by court as to Appellant Fane Lozman. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions

page at this link <ahref= "http://www.ca11. uscourts.gov/opinions"> http://www.ca11.uscourts.gov/ opinions

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

FANE LOZMAN,

Plaintiff,

vs.

CITY OF RIVIERA BEACH, a Florida municipal corporation, ~~MICHAEL BROWN, an individual, GLORIA SHUTTLESWORTH, an individual, NORMA DUNCOMBE, an individual, VANESSA LEE, a[n] individual, ELIZABETH WADE, an individual, ANN ILES, an individual, and GEORGE CARTER, an individual,~~

Defendants.

Case No. 08-80134-CIV-HURLEY/HOPKINS

[STAMP: FILED NOV 22 2013]

SECOND AMENDED COMPLAINT[1]

Plaintiff, FANE LOZMAN ("LOZMAN") sues defendants, CITY OF RIVIERA BEACH ("CITY"), ~~MICHAEL BROWN in his individual capacity, GLORIA SHUTTLESWORTH in her individual capacity, NORMA DUNCOMBE in her individual capacity, VANESSA LEE in her individual capacity, ELIZABETH WADE in her individual capacity, ANN~~

[1] This is the version of the Second Amended Complaint, as accepted by order of the court on January 17, 2014 (ECF 325). The strikeouts reflect material that was deleted. Boldfaced material within the complaint reflects wording that was handwritten onto the document.

~~ILES in her individual capacity, GEORGE CARTER in his individual capacity, CEDRICK THOMAS in his individual capacity, BRUCE GUYTON in his individual capacity, and the RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY ("CRA")~~ and alleges as follows:

Nature of the Case

This action for money damages is brought pursuant to 42 U.S.C. Sections 1983, the First, Fourth and Fourteenth Amendments to the United States Constitution, and under the laws of the State of Florida against the City of Riviera Beach ~~and former and current city officials.~~ :

1. This action is brought by FANE LOZMAN, a civic activist, against the CITY~~, CRA and its public officials~~ who used the power of ~~their~~ **its** office to retaliate against LOZMAN for his advocacy criticizing the CITY, the CRA, and their respective policies. In an effort to silence and discredit LOZMAN, the CITY and the CRA through its city administration and police department waged a campaign against LOZMAN which included false arrest, threats, retaliation and intimidation. These actions were taken to silence LOZMAN and to punish him for exercising his First Amendment rights.

Jurisdiction and Venue

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331(a) and 42 U.S.C. § 1983, as well as principles of supplemental jurisdiction under 28 U.S.C. § 1367.

3. This action is brought before the Court in the Southern District of Florida pursuant to 28 U.S.C.

§1391(b) and at the West Palm Beach, Florida, Division of the Southern District pursuant to Local Rules 3.1(F) and 3.4(D) S.D. Fla. Local Rules.

Parties

4. LOZMAN was a resident who lived on his floating home at the City of Riviera Beach marina, in Palm Beach County, Florida.

5. The CITY is a municipal corporation in Palm Beach County, Florida.

6. The governing body of the CITY is its City Council, and all powers of the CITY and the determination of all matters of policy are vested in the City Council.

~~7. Defendant MICHAEL BROWN was at material times the Mayor of the City.~~

~~8. Defendants NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES, DAWN PARDO, CEDRICK THOMAS, and BRUCE GUTON are or were council members of RIVIERA BEACH at material times.~~

~~9. Defendant GLORIA SHUTTLESWORTH is or was at material times the Assistant City Manager. Defendant GEORGE CARTER is or was at material times the Marina Director of RIVIERA BEACH.~~

~~10. Defendant CRA, has as its governing body the same elected City Councilpersons of the CITY.~~

General Allegations

11. In 2006, LOZMAN moved to the CITY. He was the owner of a floating residential structure, which was his registered homestead, at 200 East 13th Street, Marina Slip # 452 Riviera Beach, Florida.

12. LOZMAN leased the boat slip for this floating home from the CITY Municipal Marina.

13. Shortly after LOZMAN moved into the CITY marine in March of 2006, LOZMAN became aware of CITY's planned re-development project.

14. The redevelopment plan proposed the taking of thousands of homes (and many businesses) through the power of eminent domain and giving them, along with the CITY marina, to a private developer for a proposed 2.4 billion dollar redevelopment project.

15. LOZMAN made public comments against both the initial 2006 redevelopment plan and two subsequent plans in 2008 and 2011, along with the corruption he perceived in the CITY government at various CITY Council and Community Redevelopment Agency (CRA) public meetings between April 2006 to November 2013.

16. LOZMAN was removed by the police from a regularly scheduled meeting of the CITY Council while speaking from the podium during the public comments portion of the meeting on May 10, 2006.

17. LOZMAN was then denied access to a special meeting of the CITY Council following the regularly scheduled CRA meeting preceding it on May 10, 2006.

18. The morning after the May 10 special meeting, on May 11, 2006, Florida Governor Jeb Bush signed into law H.B. 1567, which signified a comprehensive overhaul of Florida's eminent domain laws. Section 73.013 et sq. of the Florida Statutes prohibits the use of eminent domain in the manner the CITY and CRA proposed for its redevelopment plan.

19. On June 7, 2006, LOZMAN filed a lawsuit against the CITY, MICHAEL BROWN, NORMA

DUNCOMBE, VANESSA LEE, ELIZABETH WADE, and ANN ILES, alleging a violation of the Government-in-the-Sunshine Law.

20. On June 28, 2006, the CITY held a scheduled closed executive session. This meeting was recorded and the transcript of this proceeding has now been made a public record. At this meeting, CITY officials discussed the Sunshine lawsuit brought by LOZMAN and the need to do "whatever we deem necessary" in the defense of that suit, including "background investigation on Lozman," the intimidation of Lozman, and the hiring of a private investigator to determine who was "funding" LOZMAN's Sunshine lawsuit. In addition, the CITY wanted to investigate LOZMAN to determine whether he was connected with an entity called the Pacific Legal Foundation, the Governor, the Attorney General's office, the legislature and local citizens that the CITY perceived as being opposed to the proposed re-development by the CITY. LOZMAN's Sunshine lawsuit had been publicly supported by comments from Governor Bush and Speaker of the House Bense to the media. Their offices along with the Attorney General's office, cooperated with LOZMAN's attorneys who prepared the Sunshine lawsuit.

21. Thereafter, LOZMAN continued attending public meetings in Riviera Beach and continued to express his views during the public portion of such meetings. However, the CITY, through its CITY Council, its various subdivisions and its individual employees, embarked on a campaign of harassment and retaliation against LOZMAN for the purpose of punishing LOZMAN for exercising his right of free speech and right to petition the government for

redress of grievances and intimidating LOZMAN in an effort to deter him from exercising such rights in the future.

~~22. Theconductof Defendants, MICHAEL BROWN, GLORIA SHUTTLESWORTH, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES, GEORGE CARTER, DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS and BRUCE GUYTON, as alleged herein, involved reckless and callous indifference to LOZMAN's First Amendment right to petition the government and exercise his right of freedom of speech without retaliation.~~

23. The CITY Council members in 2006 (MICHAEL BROWN, DUNCOMBE, LEE, and ELIZABETH WADE) had directed CITY employees and CITY police officers, to find means of harassing and retaliating against LOZMAN. GEORGE CARTER took the lead in carrying out that directive in 2006.

24. The harassment and retaliation resulted in LOZMAN's arrest in November 2006. On November 15, 2006, during the public comments portion of the CITY council meeting, LOZMAN calmly approached the podium and began making his comments. Unhappy with his comments in the U.S. Attorney's efforts to rack down on public corruption in Palm Beach County, the CITY, with the tacit approval of all of its elected officials, and at the specific direction of ELIZABETH WADE, instructed law enforcement officers to arrest LOZMAN and remove him from the meeting. LOZMAN was handcuffed while still making his public comments, thus depriving him of his rights guaranteed by the First Amendment and his rights to attend a public meeting as set forth in Florida's

Sunshine Law. The entire incident was caught on videotape.

25. LOZMAN was dragged to the CITY police department, with his hands handcuffed behind his back, where he was locked up in a holding cell.

26. The CITY claimed that LOZMAN was arrested for disorderly conduct, trespassing, and resisting arrest without violence. These charges were nolle prossed by the Palm Beach County State Attorney on January 17, 2007.

27. The campaign of harassment and retaliation against LOZMAN did not cease after his 2006 arrest. LOZMAN continued to attend public CITY meetings and was i) removed from numerous meetings by the CITY police; ii) physically grabbed by the CITY police while LOZMAN was making his public comments at the speakers podium and told to sit down; iii) physically thrown by the CITY police to the CITY Council chambers floor at the specific direction of DAWN PARDO, while LOZMAN was making his public comments at the speakers podium; and iv) regularly interrupted and threatened with police force (ANN ISLES, ELIZABETH WADE, DAWN PARDO, CEDRICK THOMAS) in an attempt to censor LOZMAN's public comment.

28. The acts constituting harassment and retaliation by the Defendants included:

a. Agreeing to intimidate LOZMAN into dismissing; his Government- in-the-Sunshine lawsuit during the June 28, 2006, executive session. The meeting was not attended by GEORGE CARTER and GLORIA SHUTTLESWORTH. DAWN PARDO,

CEDRICK THOMAS, JUDY DAVIS, and BRUCE GUYTON were not elected officials in 2006.

b. Agreeing to hire a private investigator to investigate and/or follow LOZMAN during the June 28, 2006 executive session. This meeting was not attended by GEORGE CARTER and GLORIA SHUTTLESWORTH. DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS, and BRUCE GUYTON were not elected officials in 2006.

c. Constantly censoring LOZMAN's public comments at CITY Council and CRA meetings on issues ranging from three different re-development plans for the CITY marina, allegations of corruption involving elected officials of the CITY, the misconduct and incompetence of key CITY employees and other issues of public concern.

d. A few of the latest examples of LOZMAN being censored while making public comments at CITY Council meetings include: i) on November 6, 2013, DAWN PARDO had a City police officer remove LOZMAN from the speaker podium prior to his 3 minute allocated time for public comment had expired; ii) on October 16, 2003, CEDRICK THOMAS stated from the dais that LOZMAN did not have a First Amendment right to make public comments that dealt with official records, as recorded by the Palm Beach County Clerk, of an elected official because they portrayed this elected official in a negative light; and iii) during the November 13, 2013 CRA meeting, Lozman was called a "Rapist, Cross Dressing, Fag, Piece of Shit" by BRUCE GUYTON in a vile, disgusting, and slanderous attempt to intimidate LOZMAN into not making his public comments, and/or provoking LOZMAN into a physical confrontation.

BRUCE GUYTON has a history of violence, mental instability, DUI, and illegal drug use. BRUCE GUYTON had been involuntarily committed by State Court Judge Diana Lewis, Mental Health Court, in Case No. 501996MH000389XXMAIB.

e. Arresting LOZMAN for disorderly conduct, trespassing, and resisting arrest without violence on November 15, 2006, while LOZMAN was speaking during the public comment portion of a CITY council meeting;

f. Publicly stating that LOZMAN does not have a First Amendment right to speak while he was speaking during the public comment portion of a City Council meeting on or about January 3, 2007, along with many additional meetings up to and including the November 6, 2013 CITY council meeting.

g. Causing LOZMAN to be physically removed by the CITY Police, during CITY Council or CRA public meetings, from the CITY Council Chambers, the CITY Hall building, or the Public Speakers Podium. These removals occurred on numerous occasions between 2006 to 2013. The police were directed to remove LOZMAN by the CITY Council Chairpersons (or acting Chairperson), to include LIZ WADE, ANN ISLES, CEDRICK THOMAS and DAWN PARDO. There was also an occasion where GLORIA SHUTTLESWORTH directed that a police officer remove LOZMAN from a CITY Council meeting.

h. On October 21, 2009, LOZMAN suffered a painful physical injury to his previously repaired hip socket and pelvis (there are a number of screws and plate in it from an injury sustained prior to LOZMAN moving to the CITY), after he was thrown on the CITY

Council Chambers floor by two Riviera Beach police officers at the Direction of the CITY Council Chairperson DAWN PARDO. The CITY Council and CITY attorney Pamala Ryan laughed as Lozman lay on the floor in pain. LOZMAN required a visit to the Emergency Room where his injury was diagnosed, he was provided pain medication, and he used crutches until his injury healed.

i. Constantly censoring LOZMAN's comments at public meetings of the CITY Council and Community Redevelopment Agency from 2006 through the present.

j. Filing a sham federal admiralty action that culminated in the seizure and subsequent destruction by the CITY of LOZMAN's floating residence at the CITY Marina. The U.S. Supreme Court reversed the lower courts and ruled that Lozman's floating home was illegally seized by the CITY because it was not a vessel subject to Federal Admiralty jurisdiction.

k. Illegally conducting a self-help eviction, by turning off LOZMAN's electricity to his floating home between April 1, 2009 to April 20, 2009.

l. Ignoring State Court Judge Peter Evan's order of April 17, 2009, to restore the electricity to LOZMAN's floating home.

m. Repeatedly harassing LOZMAN by having City marina employee Pierre Smith go to LOZMAN's floating home and take pictures through the window of LOZMAN, and sometimes Lozman and his female companion, in various stages of undress.

n. Repeatedly having the CITY police harass and threaten LOZMAN when he would walk his small dachshund on a lease around the CITY marina; and

o. Illegally turning off the electricity to friends of LOZMAN's who resided on their personal vessels at the CITY marina. The City did this in a selective manner, because the electricity was not turned off to other tenants' vessels.

COUNT I – 42 U.S.C. § 1983 AGAINST DEFENDANTS CITY OF RIVIERA BEACH, CRA AND THE INDIVIDUAL DEFENDANTS (SHUTTLESWORTH, DUNCOMBE, LEE, WADE, ILES, CARTER, PARDO, THOMAS, DAVIS AND GUYTON) FOR POLICY TO RETALIATE AGAINST LOZMAN AND TO SUPPRESS SPEECH

29. This is an action for injunctive relief and for damages under Title 42, U.S.C. § 1983.

30. The allegations of paragraphs 1 through 28 are incorporated by reference into this Count and are re-alleged as if fully set forth herein.

31. LOZMAN has a right to petition the government under the First Amendment of the Constitution of the United States of America, a right to exercise free speech at public meetings, and a right to be free from unreasonable seizures under the Fourth Amendment, as applied to the states through the Fourteenth Amendment.

32. LOZMAN's rights to petition the government and exercise free speech includes the right to engage in these constitutionally protected acts without fear of retaliation by the government against him.

33. The CITY, through its Council Members, determined that the CITY should retaliate against LOZMAN for his exercise of his right to petition the government and right to free speech.

34. The CITY, through its Council Members acting for itself and by direction to its subordinate boards, inspectors, officers and employees, has commenced an intentional campaign to harass and intimidate LOZMAN.

35. At all times alleged in this Count, the CITY and its individual Council Members, board members, inspectors, officers and employees acted under color of state law and in the effectuation of the policies of the Council Members.

36. Defendants deprived LOZMAN of rights secured to him under the First and Fourth Amendments of the Constitution of the United States of America, including LOZMAN's right to petition the government for redress of grievances and his right to speak out freely on public issues, and to be free from unreasonable seizures.

37. Defendants accomplished this deprivation by harassing and retaliating against LOZMAN, with LOZMAN being personally arrested twice. LOZMAN'S floating home was also arrested and destroyed by the CITY in a sham federal admiralty action. The conduct comprising the deprivation of LOZMAN's constitutional rights include but are not limited to, the conduct alleged in paragraphs 1 to 36 above.

38. THE CITY intended by each of these actions to punish and retaliate against LOZMAN for exercising his First Amendment Rights and to deter LOZMAN and others from exercising such rights in the future.

39. This policy to punish and silence LOZMAN for his public criticism of the CITY, its elected official's, [sic] and key employees was designed and carried out

by the CITY as a governmental entity, and by the individual CITY policy makers at the highest level, with the purpose of stopping and punishing LOZMAN from engaging in constitutionally protected political speech.

40. Each of the actions set forth in paragraph 1 to 28 of this Second Amended complaint was taken pursuant to a custom, policy, or decision made by a governmental official with final policymaking authority.

41. As a result of the CITY's campaign to harass, retaliate and punish LOZMAN, LOZMAN has been deprived of his right to petition the government and exercise free speech as secured under the First Amendment to the Constitution of the United States of America free from retaliation, and his right to be free from unreasonable seizures.

42. As a result of the CITY's campaign to harass, retaliate and punish LOZMAN, LOZMAN has been deprived of both substantive and procedural due process guaranteed under the Fourteenth Amendment of the Constitution of the United States of America.

43. As a result of the CITY's campaign to harass, retaliate and punish LOZMAN, LOZMAN has been deprived of equal protection guaranteed under the Fourteenth Amendment of the Constitution of the United States of America by virtue of the CITY's discriminatory and disparate treatment of LOZMAN in the application of its policies, procedures, regulations, ordinances and other laws.

44. As result of the actions and conduct of defendants, LOZMAN has no adequate remedy at law and is suffering irreparable injury as a result of the

CITY's ongoing campaign to harass him, which injury cannot be redressed in the absence of a permanent and mandatory injunction requiring the CITY to end its campaign of intentional harassment and retaliation against LOZMAN in response to LOZMAN's exercise of his rights of free speech and to petition the CITY for the redress of grievances.

45. The acts of Defendants described above were maintained under color of the law of the State of Florida and under the color of the individual Defendants respective offices as officers and agents of the State of Florida and of the CITY.

~~46. Each of the individual Defendants organized, conspired, or participated in the intentional scheme to punish and retaliate against LOZMAN for LOZMAN having exercised the right to petition the government for the redress of grievances and the right of free speech.~~

~~47.~~ The acts of the individual Defendants was so obviously wrong in the light of preexisting law, that these public officials knowingly violated the law, because they had knowledge of the law and took an oath to uphold it.

48. LOZMAN has suffered damage as a result of Defendant's violations of his Civil Rights, including:

a. Injury to his person that was sustained after being thrown on the floor by two police officers, at the direction of PARDO, while Lozman was making public comments;

b. Intentional infliction of emotional distress, and mental anguish that resulted and were limited to the specific events of: i.) being physically thrown around by the CITY police while making public

comments at CITY Council and CRA meetings; ii) the false arrest of Lozman while he was making public comments at a CITY Council meeting; iii) the stress of being harassed by the police and threatened with arrest while LOZMAN walked his dog; iv) receiving repeated death threats in front of his floating home by current CITY employee Sylvia Blue who was escorted to the secure dock where Lozman's floating home was moored by a CITY marina employee; v) receiving repeated death threats at CITY hall current CITY employee Sylvia Blue; vi) being physically threatened and slandered by GUYTON; and vii) the CITY's retaliatory Federal admiralty arrest and the CITY's subsequent purchase and then the vindictive destruction of Lozman's floating home. The intentional infliction of emotional distress and mental anguish that resulted from the above specific incidents, although significant during the time these events occurred, has been cured by the passage of time and has resulted in no permanent impairment;

c. Damages for the destruction of LOZMAN'S floating home, furniture and related contents as a result of ~~Defendants~~ PARDO, THOMAS and DAVIS wrongful actions.

d. Attorneys' fees and costs incurred by LOZMAN as a result of and in response to Defendants' deprivation of LOZMAN's civil rights.

e. Attorneys' fees and costs incurred by LOZMAN in response to each individual wrongful act committed by Defendants in furtherance of the CITY's overall scheme to harass, retaliate against, intimidate, and punish LOZMAN.

f. Attorney's fees and costs incurred by LOZMAN at the district, appellate, and U.S. Supreme Court in the related admiralty action.

~~g. The intentional, willful and wanton acts of Defendants BROWN, SHUTTLESWORTH, DUNCOMBE, LEE, WADE, ISLES, CARTER, PARDO, THOMAS, DAVIS, and GUYTON establish a claim for punitive damages against Defendants BROWN, SHUTTLESWORTH, DUNCOMBE, LEE, WADE, ISLES, CARTER, PARDO, THOMAS, DAVIS, and GUYTON.~~

49. LOZMAN had previously employed the law firm of Cobb and Cole to pursue this action and has contracted to pay a reasonable attorneys' fee, for which fees and the costs of this action, LOZMAN is liable under the provisions of Title 42 U.S.C. § 1988.

50. All conditions precedent to the filing of this action has occurred or has been waived.

~~COUNT II – CONSPIRACY TO VIOLATE CIVIL RIGHTS~~

~~(Against Defendants BROWN, SHUTTLESWORTH, DUNCOMBE, LEE, WADE, ILES, PARDO, THOMAS, DAVIS, and GUYTON)~~

~~51. This cause of action is brought by LOZMAN against Defendants MICHAEL BROWN, GLORIA SHUTTLESWORTH, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES, DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS, and BRUCE GUYTON in their individual and official capacities, for conspiracy to interfere with LOZMAN's constitutional right of free speech as guaranteed by the First Amendment to the United States Constitution.~~

52. Defendants MICHAEL BROWN, GLORIA SHUTTLESWORTH, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES, DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS, and BRUCE GUYTON entered into an agreement to silence, discredit, and punish LOZMAN in retaliation for speaking critically about the CITY and CITY leaders. Such actions were taken while said Defendants were acting under the color of law as CITY officials and policy makers of the CITY and CRA. The conspiracy was effectuated by Defendants agreeing to use their power and authority as CITY and CRA officials (excluding MICHAEL BROWN, who was not a CRA official, but was a CITY official CITY) to gather, disclose and allow the distribution of false information about LOZMAN with the purpose of retaliating against LOZMAN and punishing him, and preventing LOZMAN from further engaging in constitutionally protected speech critical of the CITY, CRA, CITY officials, and CRA officials.

a. As a direct and proximate consequence of the conspiracy between Defendants MICHAEL BROWN, GLORIA SHUTTLESWORTH, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES, DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS, and BRUCE GUYTON, LOZMAN sustained injury, physical pain and discomfort, emotional distress and mental suffering that have been cured by the passage of time and have resulted in no permanent impairment.

53. The intentional, willful and wanton acts of Defendants MICHAEL BROWN, GLORIA SHUTTLESWORTH, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES,

~~DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS, and BRUCE GUYTON establish a claim for punitive damages against Defendants MICHAEL BROWN, GLORIA SHUTTLESWORTH, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES, DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS, and BRUCE GUYTON.~~

COUNT III - FALSE ARREST

(State Tort of False Arrest against Defendant CITY)

54. This is an action for common-law false arrest.

55. The allegations of paragraphs 1 through 28 are incorporated by reference into this Count and are re-alleged as if fully set forth herein.

56. This is a cause for damages in excess of fifteen thousand dollars, exclusive of costs and attorney's fees.

57. On or about November 15, 2006, LOZMAN was arrested at a CITY Council meeting for speaking during the public comment portion of the meeting.

58. LOZMAN was removed and arrested at the direction of the CITY Councilperson WADE, with the approval of Councilmembers DUNCOMBE and LEE.

59. The CITY, through its police department, intentionally arrested and detained LOZMAN without an arrest warrant and without probable cause in that the CITY knew or had reason to know at the time of his arrest and detention that LOZMAN had not committed any crime.

60. LOZMAN was charged with disorderly conduct, trespassing, and resisting arrest without violence.

61. State prosecutors declined to prosecute LOZMAN.

62. The CITY's detention of LOZMAN was unreasonable and unwarranted by the circumstances in that LOZMAN was a resident of the CITY who was lawfully speaking at a CITY Council Meeting and who had not committed any crime.

63. LOZMAN's arrest was publicized in the CITY and throughout Palm Beach County in print and television coverage.

64. LOZMAN suffered damages as a direct result of the false arrest. The specific damages limited directly to the false arrest are:

a. Physical pain and discomfort, emotional distress and mental suffering that have been cured by the passage of time and have resulted in no permanent impairment.

65. The intentional, willful and wanton acts of WADE, with the approval of Councilmembers DUNCOMBE and LEE, establish a claim for punitive damages against WADE, DUNCOMBE and LEE.

66. All conditions precedent to the filing of this action has occurred or has been waived.

COUNT IV- STATE TORT OF BATTERY AGAINST DEFENDANT CITY OF RIVIERA BEACH

63. LOZMAN realleges paragraphs 1 through 28, and incorporates them by reference herein.

64. This is a cause for damages in excess of fifteen thousand dollars, exclusive of costs and attorney's fees.

65. Defendant CITY is responsible for the conduct of the police officers in its employ.

66. On repeated occasions between 2006 to 2013, including November 15, 2006, and October 21, 2009,

the CITY police, while acting in the course and scope of their duties as police officers employed by Defendant CITY did, without legal justification, batter, touch and strike LOZMAN without the consent of LOZMAN and against LOZMAN's will. These incidents happened during CITY Council and CRA meetings.

67. As a result of such actions, LOZMAN suffered damages that included bodily injury and physical suffering, physical discomfort, which although significant during the time these events occurred, have been cured by the passage of time and has resulted in no permanent impairment.

68. All conditions precedent to the filing of this action has occurred or has been waived.

COUNT V – STATE "INTENTIONAL TORT" OF CONVERSION AGAINST THE CITY ~~and DEFENDANTS DAWN PARDO, CEDRICK THOMAS, AND JUDY DAVIS~~

69. The CITY improperly arrested LOZMAN's floating home to include his furniture and other personal property with the approval of PARDO, THOMAS and DAVIS, on a sham federal admiralty complaint. LOZMAN floating home was towed from the CITY to Miami, after the CITY lost a State jury trial to evict LOZMAN's floating home from the CITY marina.

70. LOZMAN demanded the return of his floating home to the CITY marina and the CITY refused.

71. The CITY purchased LOZMAN's floating home at a U.S. Marshal auction. The CITY, after successfully preventing LOZMAN from stopping the confirmation of sale, maliciously destroyed LOZMAN's floating home at taxpayer expense.

72. The CITY permanently deprived LOZMAN of his property in a vindictive action to try and stop LOZMAN from exercising his First Amendment rights, to include continuing to fight the CITY's attempt to turn over the CITY marina over to a private developer.

73. The U.S. Supreme Court reversed the lower courts and ruled that LOZMAN's floating home was not subject to federal admiralty jurisdiction and should not have been seized.

74. LOZMAN is entitled to damages to include: i) the replacement value of his floating home, furniture and other accessories; ii) living expenses from April 2009 to November 2013; and iii) his legal fees at the district, appellate and U.S. Supreme Court.

~~75. The intentional, willful and wanton acts of PARDO, THOMAS, and DAVIS, to include malice and the willful disregard of LOZMAN's rights, establishes a claim for punitive damages against PARDO, THOMAS AND DAVIS.~~

DEMAND FOR TRIAL BY JURY

LOZMAN hereby demands a jury trial as to all issues triable by a jury.

WHEREFORE, LOZMAN respectfully requests that this Court enter judgment and award:

A. Reasonable and appropriate compensatory damages for: physical pain and discomfort, emotional distress and mental suffering that have been cured by the passage of time and have resulted in no permanent impairment.

~~B. Punitive damages against Defendants MICHAEL BROWN, GLORIA~~

~~SHUTTLESWORTH, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE, ANN ILES, GEORGE CARTER, DAWN PARDO, CEDRICK THOMAS, JUDY DAVIS and BRUCE GUYTON for their malicious, wanton, willful, reckless and knowing violations of LOZMAN's constitutional rights under the First Amendment.~~

C. A monetary sum representing the difference between the amount that the Admiralty District Court awards in Lozman's pending motion (Dkt. 212, attached as exhibit 1) in Case No. 09-80594-CIV-DIMITROULEAS/SNOW and the actual replacement cost of LOZMAN'S floating home to include its furniture and access ramp; LOZMAN'S living expenses between April 2009 to October 2013; and LOZMAN's attorneys' fees and costs that were incurred at the district court, appellate court, and the U.S. Supreme Court in Lozman v. The City of Riviera Beach, 568 U.S. ___(2013).

D. Damages for the conversion of LOZMAN's floating home and personal property.

~~E. Punitive damages against Defendants PARDO, THOMAS and DAVIS for the conversion of LOZMAN's floating home.~~

F. LOZMAN's costs, expenses and attorneys' fees pursuant to 42 U.S.C. __1988.

G. Awarding attorney fees, expenses and costs of this Section 1983 action pursuant to 42 U.S.C § 1988.; and

H. Such further and other relief as the Court deems necessary and proper.

Dated: November 18, 2013

By: /s/_____
Fane Lozman
Pro Se

Fane Lozman
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(786) 251-5868

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No. 08-80134-CIV-HURLEY/MAGISTRATE HOPKINS

FANE LOZMAN,
Plaintiff,

v.

CITY OF RIVIERA BEACH, a Florida municipal corporation;
Defendant.

DEFENDANT CITY OF RIVIERA BEACH'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT [DE 325]

Comes Now, Defendant City of Riviera Beach ("Riviera"), a Florida municipal corporation, by and through its undersigned counsel, and pursuant to Rule 12, *Fed. R. Civ. P.*, and the Court's *order granting Plaintiff's oral motion to file the attached second amended complaint* [DE 325], hereby answers and affirmatively defends against Plaintiff Fane Lozman's ("Lozman") *second amended complaint* [DE 325], requests trial by jury, and states:

I. Answer

A. Nature of the Case

1. Riviera admits the nature of the allegations in the instant action only for jurisdictional purposes, and otherwise denies the allegations in paragraph 1.

B. Jurisdiction and Venue

2. Riviera admits the allegations in paragraph 2 only for jurisdictional purposes, and otherwise denies the allegations in paragraph 2.

3. Riviera admits the allegations in paragraph 3 only for venue purposes, and otherwise denies the allegations in paragraph 3.

C. Parties

4. Riviera admits Lozman was a resident of Riviera, but denies he was a resident at all times material to this litigation.

5. Admitted.

6. Admitted.

7. Paragraph 7 was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 7 to the extent the Court may deem that Riviera was required to answer such allegations.

8. Paragraph 8 was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 8 to the extent the Court may deem that Riviera was required to answer such allegations.

9. Paragraph 9 was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 9 to the extent the Court may deem that Riviera was required to answer such allegations.

10. Paragraph 10 was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 10 to the extent the Court may deem that Riviera was required to answer such allegations.

D. General Allegations

11. Riviera admits that Lozman moved to Riviera in 2006 and that Lozman docked a floating residence at Riviera's marina slip #452. Riviera lacks knowledge or information sufficient to form a belief as to the truth of the remaining the allegations in paragraph 11, and therefore denies those allegations.

12. Admitted.

13. Riviera lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13, and therefore denies those allegations.

14. Riviera admits its re-development plan involved exercising eminent domain to purchase and re-develop lands within Riviera, but denies the remaining allegations in paragraph 14.

15. Riviera admits Lozman made public comments at various Riviera city council meetings and Community Redevelopment Agency meetings between April 2006 to November 2013, but denies the remaining allegations in paragraph 15.

16. Denied.

17. Riviera lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17, and therefore denies those allegations.

18. Riviera admits that Governor Jeb Bush signed H.B. 1567 on May 11, 2006 and that H.B. 1567 speaks for itself, but otherwise denies the remaining allegations in paragraph 18.

19. Admitted.

20. Riviera admits that a scheduled closed executive session was held on June 28, 2006 during a part of which the City Council discussed its strategy for investigating and defending the claims asserted in Lozman's lawsuit, and admits that a transcript of that session exists, but denies the remaining allegations in paragraph 20.

21. Riviera admits that subsequent to June 2006 Lozman attended and spoke at Riviera's public meetings, but denies the remaining allegations in paragraph 21.

22. Paragraph 22 was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 22 to the extent the Court may deem that Riviera was required to answer such allegations.

23. Denied.

24. Riviera admits that Lozman was handcuffed and escorted away from the podium at Riviera's November 15, 2006 city council meeting and was charged for his conduct with the escorting officer, and admits portions of the incident were videotaped, but denies the remaining allegations in paragraph 24.

25. Riviera admits Lozman was escorted in handcuffs to the police department, and temporarily placed in a holding cell while his arrest paperwork was

processed, but denies the remaining allegations in paragraph 25.

26. Riviera admits that on November 15, 2006 Lozman was charged with disorderly conduct and resisting arrest without violence, and admits those charges were *nolle prossed* by an Assistant State Attorney, but denies the remaining allegations in paragraph 26.

27. Riviera admits that Lozman continued to attend Riviera's public meetings subsequent to November 15, 2006, but denies the remaining allegations in paragraph 27.

28. Denied.

(a) Denied.

(b) Denied.

(c) Denied.

(d) Denied.

(e) Riviera admits that Lozman was arrested on November 15, 2006 for disorderly conduct and resisting arrest without violence, but denies the remaining allegations in paragraph 28(e).

(f) Denied.

(g) Denied.

(h) Denied.

(i) Denied.

(j) Riviera admits that a federal admiralty action was brought against Lozman's floating residence which resulted in the seizure and destruction of the floating residence, and admits the U.S. Supreme

Court made new law regarding the definition of a "vessel" and in doing so reversed the admiralty jurisdiction determined by the U.S. Southern District of Florida and affirmed by the 11th Circuit, but denies the remaining allegations in paragraph 28(j).

(k) Denied.

(l) Denied.

(m) Denied.

(n) Denied.

(o) Denied.

E. Count I – 42 USC § 1983 Against Defendant City of Riviera Beach

29. Riviera admits the nature of the Lozman's alleged cause of action, but denies the remaining allegations in paragraph 29.

30. Riviera re-alleges and re-avers its answers contained in paragraphs 1 through 28 as if fully set forth herein.

31. Riviera admits the existence of the rights generally alleged in paragraph 31, but denies Lozman held a right to exhibit improper conduct at public meetings and further denies Riviera has violated any of Lozman's alleged rights.

32. Riviera admits the existence of the rights generally alleged in paragraph 32, but denies Lozman held a right to exhibit improper conduct at public meetings and further denies Riviera has violated any of Lozman's alleged rights.

33. Denied.

34. Denied.

35. Denied to the extent such allegations purport to refer to any alleged improper actions against Lozman.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied to the extent such allegations purport to refer to any alleged improper actions against Lozman.

46. Paragraph 46 was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 46 to the extent the Court may deem that Riviera was required to answer such allegations.

47. Paragraph 47 was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 47 to the extent the Court may deem that Riviera was required to answer such allegations.

48. Denied.

(a) Denied.

(b) Riviera admits that Lozman's has not suffered any permanent impairment allegedly caused by any act of the Defendants, but denies the remaining allegations in paragraph 48(b).

(c) Denied.

(d) Denied.

(e) Denied.

(f) Denied.

(g) Paragraph 48(g) was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 48(g) to the extent the Court may deem that Riviera was required to answer such allegations.

49. Denied.

50. Denied.

F. Count II – Conspiracy To Violate Civil Rights (Against Defendants Brown, Shuttlesworth, Duncombe, Lee, Wade, Iles, Pardo, Thomas, Davis, and Guyton)

51-53. Count II was struck from the *second amended complaint* [DE 325] and thus requires no answer. Further, Count II was not directed toward Riviera, and therefore Riviera was not required to respond to the allegations in Count II. Notwithstanding the foregoing, Riviera denies any of the allegations in Count II to the extent the Court may deem such allegations to apply to Riviera.

G. Count III – False Arrest (State Tort of False Arrest against Defendant City)

54. Riviera admits the nature of the Lozman's alleged cause of action, but denies the remaining allegations in paragraph 54.

55. Riviera re-alleges and re-avers its answers contained in paragraphs 1 through 28 as if fully set forth herein.

56. Denied.

57. Riviera admits that Lozman was handcuffed and escorted away from the podium at Riviera's November 15, 2006 city council meeting and charged for his conduct with the escorting officer, but denies the remaining allegations in paragraph 57.

58. Denied.

59. Denied.

60. Riviera admits that on November 15, 2006 Lozman was charged with disorderly conduct and resisting arrest without violence, but denies the remaining allegations in paragraph 60.

61. Riviera admits that the Assistant State Attorney *nolle prossed* the November 15, 2006 charges against Lozman, but denies the remaining allegations in paragraph 61.

62. Denied.

63. Riviera admits that local news channel WPBF 25 reported the Assistant State Attorney *nolle prossing* the November 15, 2006 charges against Lozman, but Riviera otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 63, and therefore denies those allegations.

64. Denied.

(a) Riviera admits that Lozman's November 15, 2006 arrest did not cause any permanent impairment, but denies the remaining allegations in paragraph 64(a).

65. Denied.

66. Denied.

G. Count IV – State Tort of Battery Against Defendant City of Riviera Beach

67(63). Riviera re-alleges and re-avers its answers contained in paragraphs 1 through 28 as if fully set forth herein.

68(64). Denied.

69(65). Riviera admits that it is responsible for the acts of its law enforcement officers when acting in good faith and within the course and scope of their employment, but denies the allegations in paragraph 69(65) to the extent such allegations purport to refer to any alleged improper actions against Lozman.

70(66). Riviera admits that its law enforcement officers touched Lozman on November 15, 2006 and October 21, 2009, but denies the remaining allegations of paragraph 70(66).

71(67). Riviera admits that Lozman's has not suffered any permanent impairment allegedly caused by any act of the Defendants, but denies the remaining allegations in paragraph 71(67).

72(68). Denied.

H. Count V – State "Intentional Tort" of Conversion Against The City

73(69). Riviera admits that Lozman's floating home and its contents were seized and towed to Miami

by U.S. Marshals upon a finding of probable cause by U.S. District Judge Dimitrouleas, but denies the remaining allegations in paragraph 73(69).

74(70). Admitted.

75(71). Riviera admits that it purchased Lozman's floating home at the U.S. Marshal auction and that the floating home was subsequently disposed of, but denies the remaining allegations in paragraph 75(71).

76(72). Denied.

77(73). Riviera admits that the U.S. Supreme Court made new law regarding the definition of a "vessel" and in doing so reversed the admiralty jurisdiction determined by the U.S. Southern District of Florida and affirmed by the 11th Circuit, but denies the remaining allegations in paragraph 77(73).

78(74). Denied.

79(75). Paragraph 79(75) was struck from the *second amended complaint* [DE 325] and thus requires no answer by Riviera. Notwithstanding the foregoing, Riviera denies any of the allegations in Paragraph 79(75) to the extent the Court may deem that Riviera was required to answer such allegations.

II. Affirmative Defenses

80. Each and every allegation not herein specifically admitted is denied and strict proof is demanded thereof.

81. Pursuant to Chapter 163, *Fla. Stat.*, the Community Redevelopment Agency ("CRA") serving Riviera constitutes a legal entity, separate, distinct, and independent from the governing body of Riviera. As such, Lozman may not recover from Riviera any damages stemming from Lozman's alleged causes of

action which are premised on facts attributed to the CRA. Rather, such causes of action attributed to the CRA fail to state a claim upon which relief can be granted against Riviera.

82. Although the Supreme Court in *Lozman v. City of Riviera Beach*, 133 S.Ct. 735 (2013) reversed on admiralty jurisdiction and rendered the admiralty aspects of *City of Riviera Beach v. Unnamed Gray*, 649 F.3d 1259, (11th Cir. 2011) – S.D. Fla. Docket No. 9:09-cv-80594-WPD – non-binding on these proceedings, the evidence presented in that case and the Court's resulting findings of fact and conclusions of law pertaining to the retaliation issues remaining binding – or alternatively persuasive authority - for these proceedings. Specifically, in that trial Lozman fully litigated his history with Riviera which is the subject of this case, in the context of an asserted affirmative defense premised on retaliation. Ultimately, the Courts within that case determined that Riviera had not acted with retaliatory motives against Lozman. Those rulings were premised on separate subject matter jurisdiction invoked by Lozman's defenses and remain binding on these proceedings. Alternatively, to the extent this Court determines those proceedings are non-binding, this Court – during its own review of the same facts and law – should consider the admiralty proceedings as persuasive authority for holding that Riviera did not retaliate against Lozman in violation of his rights.

83. As Lozman fully, unsuccessfully litigated his asserted affirmative defense premised on retaliation within the admiralty proceedings, Lozman is on notice that re-litigating those same facts and legal arguments in this case is frivolous litigation. As such,

in prevailing in this action, Riviera will be entitled to recovery of its attorneys' fees and non-taxable costs pursuant to 42 U.S.C.S. § 1988(b) and 42 U.S.C. § 2000e-5(k).

84. To the extent that Count I alleges violations beyond First Amendment retaliation, those allegations should be dismissed as repetitive as all causes of action in Count I are premised upon alleged retaliation for Lozman's expressive activity. *See Watkins v. Bowden*, 105 F.3d 1344, 1354 (11th Cir. 1997).

85. Lozman fails to state a retaliation claim upon which relief can be granted, as Lozman fails to establish that: (a) his speech or actions were constitutionally protected; (b) Riviera's alleged retaliatory conduct adversely affected the protected conduct; and (c) there is a causal connection between the alleged retaliatory actions and the adverse effect on his speech. *See Bennett v. Hendrix*, 423 F.3d 1247 (11th Cir. 2005).

86. Lozman fails to state a claim upon relief can be granted for any alleged conduct pertaining to restricting Lozman's speech during Riviera city council meetings, as such meetings are limited public forums and are not open for endless public commentary speech but instead are simply a limited platform to discuss the topic at hand. *See Thomas v. Howze*, 348 Fed.Appx. 474 (11th Cir. 2009); *Cleveland v. City of Cocoa Beach, 221 Fed. Appx. 875* (11th Cir. 2007); *and Rowe v. City of Cocoa*, 358 F.3d 800 (11th Cir. 2004).

87. Lozman fails to state a retaliation claim upon which relief can be granted, to the extent his claims

are premised upon Riviera enacting prospective, generally applicable ordinances/ regulations/ rules/ policies/ etc. . .

88. Lozman fails to state a claim for municipal liability against Riviera upon which relief can be granted, as he fails to establish an official "policy" or "custom" that was the "moving force" behind the alleged conduct attributed to Riviera. *See City of St. Louis v. Praprotnik,* 485 U.S. 112 (1988); *Monell v. Dept. of Social Serv. of the City of New York*, 436 U.S. 658 (1978).

89. Lozman fails to state a claim for municipal liability against Riviera upon which relief can be granted, as the facts belie the existence of a "policy" or "custom" of retaliation against Lozman. Specifically, during the times material to this action, Lozman interacted with Riviera, its agents, and employees, on numerous occasions without incident. Conversely, any alleged negative interactions between Lozman and Riviera were the result of Lozman's improper conduct justifying legitimate action.

90. Lozman fails to state a claim for municipal liability against Riviera upon which relief can be granted, as he fails to establish the alleged unconstitutional motive and/or alleged conduct was attributable to Riviera's "final policymaking authority." Specifically, Riviera's governing body is a city council consisting of five (5) residents. Lozman fails to establish municipal liability against Riviera, as none of the individual members of the city council constitute Riviera's "final policymaking authority," and none of the alleged conduct allegedly motivated by animus can be attributed to a majority of Riviera's city council. *See Board of County Com'rs of Bryan County,*

Okl. v. Brown, 520 U.S. 397 (1997); *Campbell v. Rainbow City, Alabama*, 434 F.3d 1306 (11th Cir. 2006); *and Matthews v. Columbia County*, 294 F.3d 1294, 1297-98 (11th Cir. 2002).

91. Lozman fails to state an equal protection claim upon which relief can be granted, as he fails to establish with specificity that any of the alleged conduct resulted in Lozman being treated differently from other similarly situated individuals which were prima facie identical to Lozman in all relevant respects. *See Campbell v. Rainbow City, Alabama*, 434 F.3d 1306 (11th Cir. 2006); *E & T Realty v. Strickland*, 830 F.2d 1107 (11th Cir. 1987). Rather, evidence of Lozman's equal treatment includes, but it not limited to, others violating decorum being removed from meetings, and sixteen (16) other vessels/floating homes being required to vacate Riviera's marina at the same time Lozman was required to remove his floating home.

92. Lozman fails to state a Fourteenth Amendment procedural due process claim upon which relief can be granted, as he fails to establish that the Florida State court refused to provide an adequate remedy for his alleged procedural deprivations. *See East v. Clayton County, 436 Fed. Appx. 904* (11th Cir. 2011); *Horton v. Board of County Commissioners of Flagler County*, 202 F.3d 1297 (11th Cir. 2000); *and McKinney v. Pate, 20* F.3d 1550 (11th Cir. 1994). To the contrary, Lozman previously litigated the majority of this action in the Florida State Court - *See City of Riviera Beach v. Fane Lozman*, 15th Judicial County Case No.: 502006CC011382XXXXMB (transferred to Circuit Case No.: 502006CA014054XXXXMB) – prior

to voluntarily dismissing the State action in August 2010.

93. Lozman fails to state a Fourteenth Amendment (substantive due process / procedural due process / equal protection) claim upon which relief can be granted, as: (a) any alleged restrictions of Lozman's fundamental rights were the result of restrictions narrowly tailored to further a compelling government interest (i.e. pass strict scrutiny review); and (b) any alleged restrictions of Lozman's non-fundamental rights were reasonably related to a legitimate government interest (i.e., pass rational basis review).

94. Lozman fails to state a Fourteenth Amendment procedural and/or substantive due process claim upon which relief can be granted regarding the seizure of his floating home, as Riviera's actions were in compliance with the then existing admiralty law, which actions were approved and conducted by the U.S. District Court sitting in admiralty and affirmed by the 11th Circuit Court of Appeals, and which was later reversed only because the U.S. Supreme Court modified the definition of "vessel" for purposes of admiralty jurisdiction.

95. Lozman fails to state false arrest and/or Fourth Amendment unreasonable seizure (either of his person or his property) claims upon which relief can be granted, as probable cause existed for any and all seizures and/or arrests. *See Gomez v. Lozano,* 839 F. Supp.2d 1309 (S.D. Fla. 2012). Regarding the seizure of Lozman's floating home and its contents, U.S. District Judge Dimitrouleas specifically found there was probable cause to arrest Lozman's floating home prior to ordering the arrest.

96. Lozman fails to state a claim upon which relief can be granted for the state tort of conversion regarding his floating home and its contents, as at all material times Lozman did not possess an immediate right to access and/or possess the property due to his debts owed for his use of Riviera's public marina.

97. Lozman fails to state a claim upon which relief can be granted for the state tort of battery, as any touching of Lozman's person was necessary and incident to lawful law enforcement action which was reasonable and justified by the circumstances (including but not limited to the existence of probable cause for any alleged seizures).

98. Lozman lacks standing to assert any alleged claims of others, which are referenced in his paragraph 28(o), and the Court must strike such allegations from the complaint.

99. Lozman is currently litigating the issue of his alleged damages associated with the seizure of his floating home and its contents within the related (former admiralty) action of *City of Riviera Beach v. Unnamed Gray*, S.D. Fla. Docket No. 9:09-cv-80594-WPD. Once Judge Dimitrouleas renders a final order on such damages, the federal doctrine of *collateral estoppel* will attach to that order and prohibit Lozman from continuing to litigate such damages in this action.

100. Even if damages are awardable to Lozman in this action for his floating home and its contents, Lozman is not entitled to an award of the "replacement cost" and/or the difference between the amount awarded by Judge Dimitrouleas – if any – and the replacement cost. Rather, the proper measure of any

such damages is the fair market value of the property at the time of the seizure.

101. Even if damages are awardable to Lozman in this action for his floating home and its contents, Lozman is not entitled to an award of loss of use damages. *See MCI WorldCom Network Servs. v. Mastec, Inc.*, 995 So.2d 221 (Fla. 2008) ("Moreover, loss-of-use damages can be an element of compensatory damages when the damage is to personal property and the damage amounts to less than total destruction of the property."); *and Foresight Enters. v. Leisure Time Properties*, 466 So.2d 283 (Fla. 5th DCA 1985) (Cowart, J., dissenting: "When. . . property is converted. . . and not recovered by the owner, just as when it is totally destroyed by negligence, the owner is entitled to money damages in an amount equal to the fair market value of the property at the time of its conversion or negligent destruction. See, e.g., § 78.19(1), *Fla. Stat.* The owner is not entitled to additional money damages for loss of profits or loss of use or damages for depreciation to the property itself.").

102. Riviera was solely motivated by legitimate reasons for its actions. However, in the alternative, should the trier of fact ultimately find that retaliation against Lozman was a motivating factor in any conduct, Riviera would have made the same decision(s) with respect to Lozman without regard to any consideration of improper motive (i.e. "same decision" or "mixed motive" defense).

103. Riviera was solely motivated by legitimate reasons for its actions. However, in the alternative, should the trier of fact ultimately find that retaliation against Lozman was a motivating factor in any

conduct directed by Riviera's city council at any specific point in time, any casual connection between such animus and the alleged subsequent conduct, was broken by the subsequent election of other individuals to Riviera's city council whom independently (without animus) directed the alleged subsequent conduct.

104. Lozman's awarded damages relating to his reputation (and any derivation thereof; i.e. emotional distress, mental anguish, etc. . .) – if any – are barred, in whole or in part, to the extent Lozman caused and/or exacerbated such damages by self-publishing information regarding Riviera's alleged negative actions against Lozman. Throughout the course of Lozman's history with Riviera, Lozman has continuously self-published such information to third-parties via various internet websites, social media, print media, and even in television interviews. As such, Lozman has caused and/or exacerbated the alleged damages to his reputation for which he now seeks to recover against Riviera.

105. Lozman has caused, exacerbated, and/or failed to mitigate his damages, and any awarded damages must be appropriately reduced. Such conduct includes, without limitation, Lozman: intentionally escalated his interactions with Rivera; self-published the alleged negative interactions; and failed to meaningfully bid on his floating home at the public auction to foreclose on Riviera's lien. Specifically regarding Lozman's failure to meaningfully bid on his floating home (and its contents), Riviera asserts that Lozman's damages related to that property – if any – must be reduced to the actual purchase price of the property achieved at the auction.

106. Should he prevail, Lozman is not entitled for reimbursement of any fees and costs which (a) he did not incur or (b) which were not incurred in prosecuting this action. Additionally, Lozman is not entitled to reimbursement of any "attorneys' fees" for any periods during which Lozman acted as a *pro se* litigant.

107. Lozman's claims are barred, in whole or in part, by Florida's doctrine of *res judicata*. Lozman previously litigated the majority of this action in the Florida State Court – *See City of Riviera Beach v. Fane Lozman*, 15th Judicial County Case No.: 502006CC011382XXXXMB (transferred to Circuit Case No.: 502006CA014054XXXXMB) – which he voluntarily dismissed with prejudice in August 2010. Pursuant to Florida law, Lozman's voluntary dismissal with prejudice was an adjudication on the merits which prevents Lozman from re-litigating all of the issues and/or causes of action which were raised, or which could have been raised, in that action; including without limitation, all claims Lozman raised in his counterclaim, amended counterclaim, second amended counterclaim, third amended counterclaim, and fourth amended counterclaim.

108. Lozman's claims are barred, in whole or in part, by Florida's doctrine of *collateral estoppel*. Lozman previously litigated the majority of this action in the Florida State Court – *See City of Riviera Beach v. Fane Lozman*, 15th Judicial County Case No.: 502006CC011382XXXXMB (transferred to Circuit Case No.: 502006CA014054XXXXMB) – which he voluntarily dismissed with prejudice in August 2010. Pursuant to Florida law, Lozman's voluntary dismissal with prejudice was an adjudication on the

merits which prevents Lozman from re-litigating all of the issues and/or causes of action which were raised, or which could have been raised, in that action; including without limitation, all claims Lozman raised in his counterclaim, amended counterclaim, second amended counterclaim, third amended counterclaim, and fourth amended counterclaim.

109. Pursuant to Rule 12(b)(6), *Fed. R. Civ. P.*, Lozman's ***second amended complaint*** fails to state claims for which relief can be granted for any conduct allegedly occurring at City Council and/or CRA meetings but for which Lozman fails to specific: (a) the date; (b) whether it was a City Council or a CRA meeting; (c) the alleged adverse conduct; and (d) the individual elected officials and/or employees which allegedly participated in the conduct on behalf of the City Council or the CRA.

110. Pursuant to Rule 12(b)(6), *Fed. R. Civ. P.*, Lozman's ***second amended complaint*** fails to state claims for which relief can be granted for any conduct allegedly occurring outside of City Council and/or CRA meetings but for which Lozman fails to specific: (a) the date; (b) the alleged adverse conduct; and (c) the individual elected officials and/or employees which allegedly participated in the conduct on behalf of the City Council or the CRA. Claims against the government arising from alleged violations of constitutional rights must allege, with particularity, facts that demonstrate what the government did to violate the asserted constitutional right. Rule 8, *Fed. R. Civ. P.*, demands more than an unadorned, the-defendant-harmed-me accusation.

111. Lozman's Count III (State tort of false arrest), Count IV (State tort of battery), and Count V

(State intentional tort of conversion) fail to state causes of action for which relief can be granted due to Riviera's sovereign immunity against such claims and Lozman's failure to comply with the mandatory pre-suit notice requirements of § 768.28(6), *Fla. Stat.* Lozman was required, yet failed, to comply with the statutory notice requirements prior to instituting any causes of action founded on State torts against Riviera. Riviera remains sovereignly immune against any such causes of action for which Lozman failed to timely comply with § 768.28(6), *Fla. Stat.* Additionally, the *second amended complaint* is deficient as to these claims as it fails to allege compliance with §768.28(6), *Fla. Stat.* As such, the Court must dismiss with prejudice the entirety of Lozman's causes of action founded on State torts against Riviera. *See Wagatha v. City of Satellite Beach,* 865 So.2d 620 (Fla. 5th DCA 2004); *Woodbury v. State of Fla. DCF,* 854 F.Supp.2d 1184 (S. D. Fla. 2011); *and Fletcher v. City of Miami,* 567 F.Supp.2d 1389 (S. D. Fla. 2008).

112. Lozman's claims are barred by the applicable statute of limitations.

113. Riviera hereby gives notice that it intends to amend its affirmative defenses, or rely upon other such affirmative defenses, as may become available or apparent during the course of discovery and, thus, reserves the right to amend this answer and assert any such defense.

III. Demand For Jury Trial

Defendant City of Riviera Beach demands trial by jury on all issues so triable.

Wherefore, Defendant City of Riviera Beach, respectfully requests this Court to enter an order

dismissing Plaintiff Fane Lozman's *second amended complaint* [DE 325] with prejudice, and awarding Riviera its attorneys' fees (pursuant to 42 USC § 1988(b)) and costs, and such other relief as this Court deems proper, and further requests trial by jury.

Respectfully submitted,

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* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff November 26, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 3

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

FOR THE PLAINTIFF:	FANE LOZMAN, pro se 2913 Avenue F Riviera Beach FL 33404 (786) 251-5868 sp500trd@yahoo.com
FOR THE DEFENDANT:	BENJAMIN L. BEDARD, Esq. STEPHANIE KAUFER, Esq. Roberts Reynolds Bedard & Tuzzio 470 Columbia Drive, Bldg C-101 West Palm Beach FL 33409 (561) 688-6560 bbedard@rrbpa.com

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* * *

[TESTIMONY OF LORETTA WADE]

[DIRECT EXAMINATION]

[BY MR. LOZMAN]:

[8:12]

* * *

Q. Is there a portion of the agenda that's designated for public comment?

A. Yes.

Q. And what does that public comment entail?

A. The public comment entails that we listen to the public. And generally, it can be on any item that's concerning the city. We usually ask that the people are not redundant and we have even set up a code of ethics for the citizens and for the council.

* * *

[16:1]

A. The two-minute public comment was for things that was germane to the city of Riviera Beach. Any time you were not talking about city business, or

something that was helpful to the city, we did not want you to waste the city's time and the residential taxpayer's time.

The reason I said that, and stopped him before the two minutes, he had a habit of coming up and saying derogatory things and telling us that FDLE was in our backyard, and that we were being investigated and calling us crooks.

And so I simply stopped him. He was talking about Tommy Masilotti, which had nothing at all to do with the City of Riviera Beach. There were no deliberations which we had to do with that. There was no proof of anything that had ever happened in the City of Riviera Beach. So I stopped him. And he had a habit of doing that. If you played the minutes of every meeting that he attended, his actions were the same. He also --

THE COURT: All right. Let me just stop you for a second. It's very important that you listen to the question, and try to respond only to the question. So let's go back to Mr. Lozman for his next question.

BY MR. LOZMAN:

Q. Isn't public corruption an important topic to discuss at a city meeting?

[17]

A. If it concerns our city, yes.

* * *

[101:3]

[BY MR. LOZMAN]:

Q. How do you feel about public comment as an elected official for the City of Riviera Beach?

A. As an elected official, I wish it wasn't there. As a citizen, it needs to be there. Because every time – the average citizen don't always have an issue with everything that the council is doing at that point, but they may have something that needs to be brought to the council, and that's a way of doing it, and getting it out in the public. So I think it's a necessary tool – I don't know whether we had to do it or not, but I think it's a necessary tool that the elected officials hear from the people you serve.

* * *

[174:1]

[TESTIMONY OF DET. FRANCISCO AGUIRRE]

[DIRECT EXAMINATION]

[BY MR. LOZMAN]:

Q. Do you take orders from civilians?

A. No.

Q. So why did you take an order from Ms. Wade? That's her voice. Why did you take an order from her to drag me out?

MR. BEDARD: Objection. Not —

A. I didn't —

THE COURT: Wait a minute. What is the legal basis of the objection?

MR. BEDARD: He's failed to establish an order was given.

THE COURT: Overruled.

BY MR. LOZMAN:

Q. You can answer the question.

A. I was not given an order, or I was not obeying an order from a civilian.

Q. So it's just a coincidence that you dragged me out after she said that?

A. No. You were escorted out based on your behavior.

Q. But if Ms. Wade had not directed your attention to come forward, you never would have come forward?

A. Actually, I would have came forward based on your behavior and your voice raising gradually.

Q. My voice is not raised on this video.

MR. BEDARD: Argumentative – objection. Argumentative.

[175]

THE COURT: Sustained.

BY MR. LOZMAN:

Q. So you're saying as you sit there now that if Ms. Wade had said nothing, you would have come up to the podium to remove me?

A. Yes.

* * *

[207:7]

[TESTIMONY OF DET. FRANCISCO AGUIRRE]

[CROSS-EXAMINATION]

[BY MR. BEDARD]:

Q. Okay. And when did you become a police officer at the City of Riviera Beach Police Department?

A. **On June of 2006.**

Q. So at the time of this meeting, which would have been November of 2006, you had been a police officer there for a short period of time?

A. **Yes.**

Q. Prior to the date of this incident, November 15th, 2006, had you ever served in the capacity at a meeting like this?

A. **No.**

Q. All right. And what do you refer to this meeting – or what does the City police department refer to these type of meetings as, as far as a duty?

A. **It's a security detail.**

Q. Okay. And is that part of your normal working hours for the police department or is this a special security detail that you volunteer for?

A. **It's a special security detail.**

Q. All right. And so would you have requested to work extra [208] duty, I guess, so to speak?

A. **Yes.**

Q. All right. And what was your understanding of your assignment on November 15th, 2006?

A. **I was assigned to keep – to provide security at the City Council meeting.**

Q. And is it your understanding that, historically, the police department provided security for these meetings?

A. **Yes.**

* * *

[208:10]

Q. And had you ever heard Fane Lozman's name before November 15th, 2006?

A. No.

Q. Had you been made aware of Mr. Lozman in any way, shape, or form before November 15th, 2006?

A. No.

Q. Had you ever seen him on TV? Had you ever met him in person? Anything of that nature?

A. No.

Q. And – but were you aware the meetings were videotaped on November 15th, 2006?

A. No.

Q. Okay. Had you ever met Mr. Lozman – I'm sorry. I asked that question.

Prior to the meeting on November 15th, 2006, did any Council people speak to you about Mr. Lozman?

[209]

A. No.

Q. Did you speak to any of the Council people about anything before the meeting on November 15th, 2006?

A. No.

Q. All right. Did you speak to your police chief about Mr. Lozman before the meeting of November 15th, 2006?

A. No.

Q. Have you ever discussed Mr. Lozman with your chief or any other officers before November 15th, 2006?

A. No.

* * *

[219:9]

Q. Okay. Now, do you take your direction from the City Council members?

A. No.

Q. All right. Did – whether you decide to arrest Mr. Lozman or not, was that going to be based on a direction by Ms. Wade?

A. No.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff November 18, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 4

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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* * *

[50:2]

[TESTIMONY OF ANN ILES]

[CROSS-EXAMINATION]

[BY MR. BEDARD]:

Q. Sure. What was the order of the meetings? How did they generally work? You come in, you call it to order, I would imagine.

A. Yes, call it to order. Then we would look at whether there was going to be any additions or deletions to the agenda and then we would discuss the consent agenda. If there was any Council member that

wanted to pull the item from the consent agenda, that was done.

In the past we would even allow residents to pull consent agendas in. That continued to create problems. So when I became chair, we tried to just limit that to Council members. There was nothing that said a resident couldn't get with their representative to have that item pulled. Okay.

So once we cleared up the consent agenda, then we went into the other items, residents were given the opportunity to speak on those items.

Q. Let me stop you there and ask you a question. Would those often be referred to as agenda items?

A. Yes.

Q. And were the public comments limited when it was on a specified agenda item, was there any restrictions on the public comments?

A. Yes, we started off with – well, the practice had been a two-minute speaking time and because a number of people were [51] concerned about they did not have enough time to finish their comments, we moved it up to three minutes. So that was the time span allotted.

Q. What about in regards to, say, if the topic is on the solid waste authority contract? Can they get up and talk about the marina say, for example?

A. No.

Q. On an agenda item?

A. Yes.

Q. It has to be limited to the item that you're discussing in the agenda?

A. Right.

Q. Was there also a public comment time period?

A. Yes.

Q. What was the purpose of the public comment?

A. For them to address any issue they wanted to put before the Council that was not on that night's agenda.

Q. And were those comments to be talking about, say, the State of Oklahoma's affairs?

A. No.

Q. What was the purpose behind the public comment?

A. It's a range from there's a hole in my street, there's grass growing up in the canal behind my house, I'm unhappy about this or I want to see this happen.

So it was a plethora of topics brcught before – my [52] Little League baseball team won some championship. So it was a plethora of things brought before the Council during that time.

Q. Now, you were shown the videotape of 11-15-2006?

A. Yes.

Q. And that was the one when you had stepped away to go to the restroom when the incident occurred with Mr. Lozman, right?

A. Yes.

Q. He mentioned Mr. Masilotti, you identified who he is. You also mentioned Mr. Liberti. Do you know where Mr. Liberti was an elected official at that time?

A. I believe in West Palm Beach.

Q. Does the City of West Palm Beach have anything to do with what's going on at the City of Riviera Beach?

A. No.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff November 20, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 5

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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* * *

[11:13]

[TESTIMONY OF DANNY D. JONES]

[CROSS-EXAMINATION]

[BY MR. BEDARD]:

Q. All right. And whose discretion it is – is it to arrest somebody or not?

A. Ultimately, it's up to the officer. The officer has to establish probable cause and determine if he wants to make the arrest.

Q. Can the chairperson tell you to arrest somebody?

A. No, sir.

Q. Can even the city manager tell you to arrest somebody?

A. No, sir. That's left up to the – in this case, left up to the discretion of the police officer.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff November 26, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 8

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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[41:22]

[THE COURT]: Let's move on now to the jury instructions. I think if you look at the jury instructions, everything is standard up to page 5, the claims in this case. Does everybody have a copy of the jury instructions in Word [42] format?

MS. KAUFER: Yes, Your Honor.

THE COURT: Do you have that, Mr. Lozman?

MR. LOZMAN: I have your copy, yes, sir.

THE COURT: Okay. My suggestion is let's deal first with the proposed jury instruction on First Amendment retaliation.

MS. KAUFER: Your Honor, the city has prepared a —

THE COURT: Hold on, please.

First and foremost, does the plaintiff object to the elements of this claim that are found on page 5 and the top of page 6? The four elements?

MR. LOZMAN: I only had three elements.

THE COURT: Do you have the jury instruction page 5 and going on to page 6?

MR. LOZMAN: Right. I'm saying in my analysis I only had three elements.

THE COURT: The jury instruction sets for four elements on page 5 and 6. Do you have the right jury instructions?

MR. LOZMAN: Yes, sir, I do.

THE COURT: Okay. Do you have four elements there?

MR. LOZMAN: Yes, I do.

THE COURT: Okay. Do you object – are you satisfied with those elements?

[43]

MR. LOZMAN: I need to look at my board. Can I just retrieve my board?

THE COURT: Yes, you can look at anything you like.

MR. LOZMAN: Okay. Give me one minute, Your Honor.

My —

THE COURT: Can you come on up to the lectern, please?

MR. LOZMAN: Sure.

THE COURT: Let me begin. Are you satisfied with the first introductory paragraph on page 5 under the heading First Amendment Retaliation?

MR. LOZMAN: I'm satisfied with everything but the final paragraph. I don't believe the fourth element has to be proved. I don't think the fourth element is relevant.

THE COURT: All right. Thank you. Are you satisfied with everything else, though, in the jury instruction? And I'm going then to the bottom of page 6.

MR. LOZMAN: Everything but the last paragraph.

* * *

[77:23]

MS. KAUFER: Your Honor, the city next goes on to add an instruction that Mr. Lozman's arrest on November 15th, 2006, cannot constitute adverse conduct for purposes of [78] retaliation unless you found previously on Mr. Lozman's Fourth Amendment claim that Officer Aguirre did not have probable cause to arrest Mr. Lozman.

What the city did in our proposed instructions was we put the Fourth Amendment claim first. That way the jury has already made the determination as to whether or not there was probable cause for Mr. Lozman's arrest on November 15th, 2006. The way the Court had it, the Court had a separate instruction given as false arrest as retaliation under the First Amendment where the probable cause element was

stated and then kind of referred – incorporated in there.

THE COURT: I hear you on that. Can you hold off on that, though? I understand what you're saying. Conceptually it would make sense if the jury had addressed that issue. So okay. I understand. Let's wait on that one.

* * *

[81:1]

THE COURT: All right. Let's move on to false arrest. And I'd like to go back to the city for a minute.

What is the city's theory on the justification to arrest Mr. Lozman?

MS. KAUFER: Your Honor, the city's theory is that Officer Aguirre had probable cause to arrest Mr. Lozman for any one of four different offenses, and we lay those offenses out.

THE COURT: What are the four offenses?

MS. KAUFER: Disorderly conduct.

THE COURT: What was the disorderly conduct? How does Florida – how does Florida define disorderly conduct?

MS. KAUFER: Florida defines disorderly conduct as committing such acts as of a nature to corrupt the public morals or outrage the sense of public decency or breach of the peace and quiet of the persons who may witness them or to engage in brawling or fighting or engages in such conduct as to constitute a breach of the peace or disorderly conduct.

THE COURT: Okay. Now, how have the Florida courts interpreted that statute? What do they require

before someone can be found guilty of disorderly conduct?

MS. KAUFER: They require words known to be false, utterance of words known to be false, like shouting fire in a crowded theater.

THE COURT: Yeah.

[82] **MS. KAUFER:** Or fighting words.

THE COURT: Okay. Aren't you willing to concede that that doesn't happen here?

MS. KAUFER: I do believe that there is a question, Your Honor, because when Mr. Lozman – when Officer Aguirre comes up to Mr. Lozman and asks him to leave, Mr. Lozman turns to him and at that point says, I'm not going anywhere. And things at that point start to get heated. And I think that there is a colorable issue as to whether or not that would be considered incitement, if you will, under disorderly conduct.

THE COURT: All right. I don't think you'd get too far there. You have a problem with that one. And, you know, it's interesting because if we say that a city commission can have Rules of Decorum – and I think we all agree they can. We can debate what are the Rules of Decorum. Obviously, they can enforce those rules by having – if necessary, having a sergeant-at-arms or a police officer come up and literally move somebody away.

The problem, I guess, gets into the situation where the person at the podium refuses to move. And there have been several instances of that in this case. Mr. Lozman, for instance, exclaiming, I have 46 seconds left, or something like that. It doesn't sound to me like that's disorderly conduct. Certainly causing a

disturbance at the meeting, but [83] it doesn't sound like that's disorderly conduct. If it's not – at least disorderly conduct as the Florida courts have defined that statute. When you read that statute, there are lots of – lot of terms like breach of the peace, and that's – it sounds very encompassing. But we realize the statute has been interpreted so much in a narrow fashion. So if it's not disorderly conduct, what would be something else that it could be?

MS. KAUFER: Well, Your Honor, there's three other offenses.

THE COURT: And just to come back for a minute. I think we all agree that when a policeman literally takes somebody by the shoulder and moves him out of the chamber, if that's the thing, that's not an arrest. It may escorting the person from the podium, but that's not an arrest. Because our problem here is, as we all saw, early on the officer, Officer Aguirre, he takes out the handcuffs and he puts it on. And I think everybody would acknowledge that is an arrest at that point. And even he acknowledged it. He was asked point blank, Did you place Mr. Lozman under arrest? And he said yes.

But I think as a matter of law, clearly that was an arrest. And a reasonable person would have assumed at that point that his ability to, you know, leave or be out of the control of the police officer had stopped. He had been [84] handcuffed. So if there an arrest and it's not disorderly conduct, what is it for at that point?

MS. KAUFER: It could be several different things. One would be trespass after warning. Another –

THE COURT: Well, now let me stop you for a second. Trespass after warning. Let's assume that the chair of the commission said, You're out of order, stop. And let's assume that that can be interpreted to mean step away from the podium. Under the trespass after warning statute, does the police officer have to give the warning?

MS. KAUFER: Your Honor, Officer Aguirre did give the warning. He –

THE COURT: So – but answer my question. Is it the police officer who has to give the warning?

MS. KAUFER: Let me look at the statute. I think it just has to be any person who is authorized by the owner of the property –

THE COURT: But isn't that usually the police officer? I'm thinking of the case – remember we talked about this before. There are a lot of cases involving juveniles. It's interesting how particular statutes look like they have a more common application. So you've got several cases with people in public facilities, like in a library, and they're causing a commotion. And so the issue in some of those cases was whether the librarian, who would [85] have had the authority, she gave or he gave the – the direction to the police officer or the approval to the police officer to go ahead and tell this fellow to get out.

MS. KAUFER: Your Honor, the statute actually defines what a person authorized is. And it means an owner or lessee or his or her agent or any law enforcement officer whose department has received written authorization from the owner or lessee or his or her agent to communicate in order to depart the property in case of a threat to public safety. Obviously,

the members of the city council would certainly be agents of the city. And then you've got the law enforcement officer –

THE COURT: So you have's got the chair –

MS. KAUFER: – Officer Aguirre.

THE COURT: So you've got the chairperson concluding that the Rule of Decorum has been violated or the time has expired. I suppose it could be as simple as that. And the chair says, Okay, you need to move away. So there's the warning to step away from the podium. And the person doesn't do that.

MS. KAUFER: And then Officer Aguirre – in this case, in Mr. Lozman's case, Officer Aguirre before he put the handcuffs on him warned Mr. Lozman. He said, You need to come outside with me.

THE COURT: Right. He reinforces you need to come [86] with me.

MS. KAUFER: I gave the lawful – gave an order. Go outside with me. Mr. Lozman said, I'm not going anywhere. So at that point Mr. Lozman had been warned two times. He'd been warned by an agent of the city, and then he was warned by an officer of the city, who is defined in the statutes as a person authorized. Because Officer Aguirre is the police officer who is tasked with being the sergeant-at-arms and enforcing that meeting so –

THE COURT: We normally tend to think of trespass as being inside a facility or being on property. But I take it, it's your view as you're thinking about it, that you can apply it even in a more narrow setting, and it could be simply standing at the podium in this meeting when you have been told to leave the podium.

The chair is not telling you to step out of the chamber, they're just saying you need to leave the podium.

MS. KAUFER: And Officer Aguirre, when he approached Mr. Lozman before he put the handcuffs on – even if Your Honor is not persuaded that the city's interpretation of the podium itself as the area where the trespass occurred, Officer Aguirre, when he approaches Mr. Lozman before he puts the handcuffs on, he says, You need to go outside, meaning outside of the chambers. So even in a broader sense, Mr. Lozman was trespassing without warning within the – [87] within the chamber when the officer gave him the instruction to leave.

THE COURT: And take it, your view is you can violate the statute even though you're not being told to leave the premises, you're just being told to leave the podium area.

MS. KAUFER: Yes. And even if Your Honor is not inclined to take that view, the chambers itself. Because Officer Aguirre didn't just say to Mr. Lozman, You need to leave the podium. He said, You need to come outside with me.

THE COURT: Okay. A for effort. Have you found any case that supports your view of this?

MS. KAUFER: I have not, Your Honor. We would just rely on the language of the statute that I just read to you as to what a person authorized is.

THE COURT: Well, it sounds like – and you're saying – I mean when you think about it, you're saying that – you're really saying there's a difference between giving the warning – the statute seems to allow a non-law enforcement person to give the warning. Don't come on. And when you think about it, you know, we

all – we all see like those signs that people would put on property that says, Don't cross this fence.

So you're saying that someone who's had an invitation to come up, the invitation in a sense is [88] conditional. It's conditional that you won't extend the time – you won't exceed the time period. It's conditional in the sense that you'll abide by whatever rules have been established, and that that conditional invitation can be withdrawn. Now, there are cases that say there really has to be the warning. There has to be the warning to the person. And you're saying in this case, it's the chair who is the authorized person who says, Okay, now you're out of order, step aside.

MS. KAUFER: And Officer Aguirre himself he said – reiterates it.

THE COURT: But he – he really confirms it, doesn't it?

MS. KAUFER: Yes.

THE COURT: So you're saying you got a double – a double protection here because you've got the chairperson saying it, and then follows up by the police officer. And if the person doesn't do it, he can then actually arrest.

You know, it occurred to me – and again, I guess you can get all kinds of things like this. But the person who says, No, I won't go, and they grab the podium. I mean, what does the police officer do? Do they wrench someone's hands apart and take them away? At what point does the – does the refusal to leave rise to such a level that it literally can be enforced as a criminal violation rather than [89] simply enforcing the Rules of Decorum.

So okay. You're relying on trespass after warning. I guess we can all think about that.

MS. KAUFER: Yes.

THE COURT: What s the next one?

MS. KAUFER: Resisting – well, the title of the statute Resisting Arrest Without Violence, but the text of the statute makes it a criminal offense for any person to obstruct or resist by his words, conduct, or a combination thereof an officer who is engaged in the lawful execution of a legal duty.

In this case, Your Honor – and there's case law that says this. The lawful execution of a legal duty. The legal duty encompasses more than just the arrest. For example, an officer can be obstructed, and a person can be charged with resisting arrest without violence if they obstruct an officer who is, for example, investigating a 911 call or in the process of serving process or effectuating a detention. The city's position –

THE COURT: Well, not think about it for a minute. Those are traditional law enforcement duties, aren't they, that policemen or police officers enforce as a police officer? Now, if a police officer comes to a meeting of the city council, and the police officer is there in a sense to provide security, and they do it – they do it literally as [90] in the performance of their duties. They're there in uniform. They're being compensated. This is not a policeman, for instance, who is out on the street outside a private party who's been retained to help with parking, but the city has called upon him to provide security. So is it your premise that that does, in fact, constitute the performance of a legal duty?

MS. KAUFER: Yes, Your Honor. And it's our premise that Officer Aguirre was engaged in an execution of the legal duty when he went to the podium.

THE COURT: Okay. But hold on now for a second, and let's just look at that business about the legal duty. What cases have you found that to limit what defines the legal duty of the police officer? You've just told me you found some that talk about serving process; is that right?

MS. KAUFER: Yes, Your Honor. There's a Florida case – well, first of all, we cite to a Middle District case, the Gonzalez-Torres versus Buswell.

THE COURT: Just give me the cite.

MS. KAUFER: 2014 Lexis 41017.

THE COURT: Okay. What was the officer doing there?

MS. KAUFER: That we cited for the proposition that legal duty is encompassed more than just making the arrest. And let me turn to the page. [91]

THE COURT: When you think about it, the normal kind of thing you run into is a police officer arresting somebody. And you might have someone A) refusing to give their name or they fall down on the sidewalk and that sort of thing. But let's – let's explore this concept of legal duty. The officer performing a legal duty. Is that defined anywhere in cases that you have found?

MS. KAUFER: Yes.

THE COURT: You mentioned some.

MS. KAUFER: Yes, Your Honor. The AR versus State. It's a Florida case, 127 So.3rd 650. It states – it

gives some examples of what lawful execution of a legal duty include.

THE COURT: What are the examples that they talk about?

MS. KAUFER: Serving process, legally detaining a person, asking for assistance in an emergency situation, and investigating a 911 call.

THE COURT: Okay. So what you're really saying is maybe you haven't found a case right on point for this –

MS. KAUFER: Exactly.

THE COURT: – but your argument would be that – I mean, especially today, where security issues are certainly regarded as legitimate issues, that in a governmental meeting, having a police officer present to help maintain [92] order or enforce things, that that would be a legal duty. That's your beginning point.

MS. KAUFER: Yes, Your Honor.

THE COURT: And the evidence shows that the officer here was in uniform.

MS. KAUFER: Yes.

THE COURT: Was being compensated. He even talked about that. It was a special shift. And he's present. Where do we go from there? He's performing a legal duty.

MS. KAUFER: When he goes up to the podium and ordered Mr. Lozman to leave the city chambers. And that was before, again, he even placed the handcuffs on him.

THE COURT: Right.

MS. KAUFER: And Mr. Lozman said, I'm not going anywhere, and grabbed the podium. And at that point, he is obstructing within the definition of that statute. And it's Florida Statute 843.02. Because he's obstructing by both his words and his conduct, an officer, Officer Aguirre, who is engaged in the lawful execution of his legal duty, which is essentially the sergeant-at-arms, if you will, of the meeting, to remove public speakers when they have been ruled out of order.

THE COURT: That is interesting, isn't it? We agree that someone can be removed from the podium and that that is not placing the person under arrest, and they're [93] doing that pursuant to the direction of the chair. I suppose if someone laid a suit, the police officer, you know, and said you – you put your hand on me and you directed me out, we – you would have some immunity from that in the sense that he was doing it at the direction of the chair.

I think probably the legal issue we have to look at is, is a police officer who is in effect serving as a security component for a public meeting, is that the lawful performance of his legal duty, huh?

MS. KAUFER: Yes, Your Honor. And I'm still looking to see if I could find a case that holds that. I haven't found it yet.

THE COURT: But let – is there a statute that defines the legal duties of a duly enacted public – police officer? We know they have the – for instance, the one that comes up all the time is the right to arrest. Do you know that statute? Have you looked at that?

MS. KAUFER: I haven't looked at that specific statute, Your Honor. The actual statute on the

resisting arrest doesn't define what lawful execution of a legal duty is.

THE COURT: That's what it says, lawful execution of a legal duty?

MS. KAUFER: Yes. Yes, that is what it says. And so that's why we looked to the Florida case laws for examples [94] of what those could be. And it is clear that it encompasses much more than just actually making the arrest. That much is crystal clear. And so we would just argue that it would extend to an officer in the sergeant-at-arms context, who is trying to perform the duties that he was assigned. Because as Officer Aguirre testified, that is a particular duty that they put in for and are assigned. He's not there just tangentially on city business.

THE COURT: Right. He's not someone who's there to speak himself and then volunteers to step up. All right. Well, that's an interesting argument. What else do you have?

MS. KAUFER: We have disturbing a lawful assembly. And that one is perhaps the most on point. It's Florida Statute 871.011.

THE COURT: I'm sorry. 871 point?

MS. KAUFER: 011. It makes it a criminal offense for any person to willfully interrupt or disturb any assembly of people met for any lawful purpose. And –

THE COURT: Has that ever been construed by any court?

MS. KAUFER: Yes, Your Honor. The Middle District in the case of Hays vs. City of Tampa, 2014 Lexis 139752. Actually found that a police officer had

probable cause to arrest someone who was making a disturbance at a code enforcement board hearing. Under that statute they found [95] that the officer had qualified immunity in that the officer had arguable probable cause to believe that the person was violating that statute. There is –

THE COURT: That's interesting. Now think about it. Here's a court that has said arguable probable cause. And, of course, arguable probable cause is a defense, isn't it, to personal liability under certain things? But would a police officer have probable cause – there's a difference between arguable probable cause and probable cause, so –

MS. KAUFER: Well, Your Honor, for purposes of this case, at least for purposes of directed verdict, we will argue that Officer Aguirre had qualified immunity because there –

THE COURT: There is no qualified immunity in this case. He's not charged.

MS. KAUFER: There is case law out of the 11th Circuit, and I have it on my computer. Not here. But there's case law out of the 11th Circuit that says that if an officer had qualified immunity such that there was no constitutional violation, then you don't reach the Monell claim. So that it could be raised by the city in a case where an officer wasn't sued individually.

THE COURT: I'll have to take a look at that. I don't think that's the case here, though. I – he either has – there is probable cause and or there is not. So we [96] got to look at that.

Now let's – let's think about this for a minute. And again, looking at the facts of the case. You have a chairperson who says to the speaker, You're violating

the Rules of Decorum. You need to step aside. You need to stop and step aside. And the person doesn't do that. So the officer approaches and, in a sense, gives a warning. Come on now, you need to step aside. And the person refuses.

Read the statute again, if you would, and let's just take a look at it.

MS. KAUFER: The statute says whoever willfully interrupts or disturbs any school or assembly of people met for the worship of God or for any lawful purpose commits a misdemeanor of a second degree. And Florida state cases have defined assembly as a town council meeting. So that's clear.

THE COURT: Sure. How about the word disturb? In other words, what do you mean for disturbed? How has that been defined? Have we gotten to that yet?

MS. KAUFER: Yes. The case of SHB versus State. It's a Florida case, 355 So.2nd 1176. Says that to commit an offense under the section, a person must have deliberately acted to create a disturbance, meaning the – and then – well, it doesn't say meaning. It's number – that's one. And then two, the acts complained of must be such that a reasonable person would expect them to be disruptive. And [97] three, the acts must, in fact, significantly disturb the assembly.

And the city's position is that when Mr. Lozman refused to go out with Officer Aguirre and said, I'm not leaving, at that point he was deliberately acting to create a disturbance. He – a reasonable person would have known that refusing to go outside with the officer was going to create a disturbance. And then, as we all saw, the assembly was, in fact, disturbed because you

have Officer Aguirre who has to handcuff Mr. Lozman and bring him out –

THE COURT: And there's all the screaming and yelling.

MS. KAUFER: Yes.

THE COURT: And your point is you don't have to have chairs overturned or the podium knocked down. It's the – the normal flow of businesses had to be stopped and brought to a halt as the person is forcibly then removed by the police officer.

MS. KAUFER: Correct, Your Honor.

THE COURT: Do you have a fourth – I'm sorry. Was there something else you wanted to say?

MS. KAUFER: That is a Florida – the SHB versus State case that I referenced, that defines what specifically it means to create a disturbance. That's a Florida Supreme Court case. [98]

THE COURT: Uh-huh. Do you have another statute that you wanted to say?

MS. KAUFER: That was all of them. Those are all four. The disorderly conduct, which I understand the Court may not be inclined to give. The trespass after warning. Resisting arrest without violence, and the disturbing a lawful assembly.

It's the city's position that the jury should be instructed on all of those. And we've based our instruction on trespass after warning, resisting arrest without violence, and disturbing a lawful assembly off of the criminal pattern instructions from Florida, so –

THE COURT: Let me put this to you, though, and – are these issues that we put in front of the jury or does the Court simply instruct the jury that there was

probable cause or there was not probable cause? I mean, the facts of our case, when you think about it, are really not in dispute. We have – sometimes you have different accounts of what happened. But we've actually got the clip. We can see what happened. And we do have testimony. What is your view on that?

MS. KAUFER: I think, Your Honor, if – I think what the case law says, Your Honor, is that the Court can decide probable cause as a matter of law only where all of the facts are so crystalized that there is no dispute [99] whatsoever. And in this case Mr. Lozman hasn't testified yet, so we don't know what he's going to say yet and if that's going to be in conflict with anything that Officer Aguirre said. So I guess after Mr. Lozman testifies, then we're going to have to evaluate whether or not that decision can or cannot be made by the Court, but –

THE COURT: And I suppose also you get into that situation where you say no reasonable juror could find X or Y. I mean, this is one of those situations where we don't just have two people potentially saying two different things. Now, there may be some things we couldn't hear. So if you have the officer saying, I said this to Mr. Lozman, and it's not audible on the tape, maybe that creates something. But your view is that where you have two – where you have two accounts and they deal with disputed issues, it should go to the jury, huh?

MS. KAUFER: Correct, Your Honor.

THE COURT: So the city's view is that you want the jury instructed on these four or these three, whatever the number that would be appropriate, different statutes?

MS. KAUFER: Yes, Your Honor, because, as we know, the validity of the arrest doesn't charge on – doesn't turn on what was charged at the time of the arrest. Officer Aguirre needed only to have probable cause for something. So the city would instruct the jury on all four of those. [100]

THE COURT: Okay. Well, let me come to Mr. Lozman.

Mr. Lozman, what is your view? First, do you agree with the premise that the crime that you were actually arrested for does not determine anything as long as the officer had probable cause for some crime? Do you agree with that concept?

You want to come on up to the lectern for a moment.

MR. LOZMAN: With all due respect to Ms. Kaufer, who did a – certainly a nice job digging this all out, but I just think it's —

THE COURT: But let me put that question to you just so you can focus for a minute because it's kind of a foundational issue. Do you agree with the proposition that despite the fact that the police officer may have charged you initially with two crimes and then he changed one and so on, do you agree that as a matter of law, the real issue is did he have probable cause to arrest you for anything?

MR. LOZMAN: Exactly. If you can't – if he had no probable cause, you don't have to go any further.

THE COURT: Okay. But do you also agree with the concept that it can be for some statute that he wasn't even aware of at the time?

MR. LOZMAN: I'm going to say that they abandoned the trespass without – see, the city's practice was trespass with warning? [101]

THE COURT: Yeah. But come on back to what I just asked you. Because I hear what you're saying. Do you agree with the basic concept that as long as they can prove any crime, no matter what he was thinking of, that's good enough?

MR. LOZMAN: No.

THE COURT: Okay. All right. I'll look at that, but do I think that is the law. I do think that is the law. Now, you've just heard the city say they think there are four different statutes. Do you want to talk about any of those?

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff December 1, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 9

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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[235:23]

[TESTIMONY OF PAMELA RYAN]

[RE-DIRECT EXAMINATION]

BY MR. LOZMAN:

Q. Is a city council meeting held for the benefit of the citizens?

[236]

A. The city council has to run the city. Those council meetings are primarily to operate in the sunshine and take care of the business of the city. Budgets, purchases, ordinances, it's to take care of the business of the city. The public is allowed to

participate. We want the public to come to those meetings, watch our meetings, comment on the meetings, but they are ultimately business meetings.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff December 2, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 10

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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* * *

[234:21]

[THE COURT]: I've been wrestling with this concept that the City has come forward with – dealing with the alleged false arrest. And if I understand the City's argument it is this: It doesn't make any difference what Mr. Lozman was actually arrested for. [235]

As a matter of law, if the police officer had probable cause to arrest him for any crime, then he would have had probable cause. So we don't – the analysis doesn't turn on what the police officer wrote on the charging document.

And the City suggested that there were three separate crimes that it was looking at, disorderly conduct, resisting an officer in the lawful performance, resisting, obstructing – there's a third word, I think, that goes with that. And then there was the statute of disturbing a public meeting.

MR. BEDARD: There was a fourth.

MS. KAUFER: There was a fourth, Your Honor.

THE COURT: Trespass after warning.

MS. KAUFER: Yeah.

THE COURT: I don't think that there is any evidence that would be sufficient to establish the crime of disorderly conduct. In other words, looking at the evidence – let me back up for a moment.

One of the interesting things of this case is we have got a video clip. We know exactly what happened on November 15th of 2006 because we have a video clip, with both sight and sound.

And if you look at that evidence and look at it in the light most favorable to the City, there's nothing there [236] that would establish the crime of disorderly conduct. The words did not rise to the level of fighting words and things like that, and there were no actions and so on that would constitute disorderly conduct.

I think Ms. Kaufer made a very interesting argument and an intriguing argument on the notion that the resisting a police officer and obstructing a police officer in the lawful performance of his duties, that that was a broad statute, has many applications.

And I think it's true, but virtually all of those applications involve a police officer in the performance

of law enforcement duties. And the courts have read that broadly, depending on the circumstances of what was taking place.

We have seen the case of the mother who called the police because her 12-year-old daughter was believed to be engaging in sexual activity with someone else, and the police come to the home, and their child becomes agitated, and the police are fearful that the child is going to, perhaps, assault the mother, and there is an effort to, you know, quiet the young girl down and by moving her – and the next thing you know, she's kicking or reacting against the police officers.

And when you think about that, it's a police officer involved in the investigation of a potential crime [237] and an escalating things and so on.

And the example I think of is a police officer who comes on a crime scene, and there's somebody standing nearby. And the police officer says to that person, You need to step aside, you need to step out of the way, and the person is resistant. That police officer is performing a lawful function in the course of his duties; he's preserving a crime scene and so on.

So the failure of someone to move in that situation, just the failure to abide by the law officer's duty, his direction, may well constitute the crime of obstructing a police officer and so on.

And I was thinking about what we have here. And, you know, we look at Officer Aguirre – am I pronouncing his name properly, the young officer who was there at the City Council meeting?

In all these other cases when we're looking at a police officer, the police officer is making a judgment, himself, about whether something is happening, and he's making a determination whether someone is violating one of the criminal laws or perhaps a traffic law of the State of Florida.

I'm looking at what took place here in the City Council meeting because we know that Commissioner Wade listened to Mr. Lozman, and Commissioner Wade concluded that [238] he was not speaking on topic. That's one explanation.

Mr. Lozman believes that she was disturbed because the people he was referring to, at least Mr. Masilotti, former Commissioner Masilotti, Palm Beach County Commissioner Masilotti, may have been a political friend of hers or colleague.

But it clearly is the commissioner who suddenly calls out to the officer and tells the officer to remove this person. And then, of course, the policeman ultimately puts handcuffs on Mr. Lozman when he won't move.

I don't think that the resisting and obstructing an officer applies in that situation because the officer, he's taking direction from the Council person. Now, my view is that if a police officer is called to the City Council chambers and he's in uniform, that's his duty. He clearly is providing or performing a function of law enforcement.

He's there to ensure that there's not a breach of the peace. And I think some of the cases talk about the fact that police officers are not only there to investigate crime, they're there to prevent crime. That's a

legitimate law enforcement function. So there's no question in my mind that, when Officer Aguirre was called to the City Council chamber, he was there to – in a law enforcement capacity.

I think the tougher question, though, is when he responds to the Chair's direction to, Tell that fellow to [239] move away from the lectern, is that a law enforcement function? I don't think it is.

It is more akin to a sergeant in arms who is enforcing, if you will, the directions of the Chair of a legislative body. And what we're trying to do is we're trying to fit in what happened here with the laws of the State of Florida.

Well, I want to go – so I really don't think, as a matter of law, that the resisting or obstructing a police officer applies to what happened here. In other words, looking at in the light most favorable to the City, I don't think the officer would have had probable cause to arrest for that purpose.

So then you get into how about disturbing the public meeting, and I think that's very much akin to the disorderly conduct. I think – and I'm not making a dispositive ruling on any of these, but I wanted to share with you where I am at this point. I think the conduct has to be somewhat akin to the disorderly conduct to meet constitutional standards.

So here is where I come down: I think that, when we look at what's happening in this City Council meeting, I think it's the trespass after warning statute that applies, and I recognize that he started out thinking that way, and he abandoned it, but that's neither here nor there. [240]

And I was really taken, as I've been thinking about this, with Ms. Ryan's reaction the other day in response to Mr. Lozman, you know, when she said, What is this? This is not a park. This is not a public forum. This is the City Council conducting its business. It's a – it is a limited – if I get the right term here, dedicated – it is – number one, it is a City Council meeting.

And as I said earlier today, absent a state statute or something else, there's absolutely no First Amendment requirement that a City Council open it up to public comment. It's the City Council conducting their business in the public. Now, there may be a state statute that says, You got to have a public comment section. But here is my point: A City Council, if it decides to, can create a limited dedicated public forum if it says, We're going to welcome public comment.

And so they can have an express invitation to the public to come forward and participate, but implied in that invitation is the concept that you're going to do it subject to our rules. For example, we're going to have a three-minute limit, that's completely reasonable, that's content neutral, and so on.

And I would suggest to you, in a limited dedicated public forum like this, you could have content limitations as well. I think one content – a good example would be on an [241] agenda item. You can only speak to the agenda item. We're trying to move forward and conduct the business of the City, and we want to talk about are we going to build an addition to the City Hall or not.

So the fellow who comes in and says, I want to talk about the youth league, and I'm all in favor of the

youth league – now, I suppose if he came in and said, Don't build the City Hall addition because we need to use the money for that, that would be a legitimate topic under the agenda item.

But the point is, clearly, the City Council has a right to say, on the agenda items, you've got to talk about the agenda item. By the same token, the City Council can have a rule that says – and it need not be, it may not be a written rule, but a rule that says, on the public comment, it has to be something that has some bearing on the business of the City, that, you know, you're here to talk about issues involving the City of Riviera Beach and that's what we're going to require.

Now, if the City can do that, and the City can have an express invitation to the public and, if indeed, there is an implication that the speaker, the public speaker is subject to the rules that the City Council enacts that are valid rules, – let's assume they're valid rules – then the Chair of the City Council certainly has a right to withdraw that invitation if the Chair concludes that the speaker is [242] not abiding by the rules.

If the Chair, having reached that conclusion, turns to the speaker and says, Sir, you're out of order, please leave the podium, if the speaker declines to follow that, certainly, the Chair has a right to turn to a law enforcement officer who is present in the facility and invite that officer to come forward and, just like the case of the policeman who comes to the public library where there are juveniles raising Cain and disturbing the atmosphere of the library, certainly the librarian can say to the police officer, You need to get those kids out of here, they're creating a disturbance, they're

inhibiting the other people's ability to use this public facility.

Well, I suggest to you that the Chair can turn to a law enforcement officer and say, I withdraw the right of that person to be at the podium, he's violating our rules. And if that police officer has received that authority from the City Council Chair, the police officer, it seems to me, is entitled under that statute, to turn to the person and say, You need to leave, I'm giving you a warning. And if the person doesn't accede to the officer's demand, he can be arrested for trespass after warning.

I think that's exactly what fits here. This is – number one, it's what happened. The police officer, he's a young police officer – doesn't make any difference, [243] he could be an experienced person – but he's there and the Chair or a – he's there in the chambers and he receives a request from the Chair.

He's not operating – he doesn't know whether the rule, you know, has been violated or not. The Chair is saying to him, The rule has been violated, tell that fellow to step aside. So what the officer is doing is saying, I'm giving you a warning, please step aside. If the person resists, it seems to me that's trespass after warning.

Now, I wish it were so simple. I mean, that's the statute that I think we're dealing with, and I think, as a matter of law, I'm leaning toward the proposition that I can rule that the other three have no application here, that looking at the evidence in the light most favorable to the City, it would not be grounds to support any one of those other three statutes, that is

an arrest for a violation of any one of those other three statutes.

But here is the problem – and we have got to think about this. The City Council operates under rules of procedure. The police officer has to receive direction from someone who had the authority to give that direction. I may be wrong about this, and I've gone back and looked at Councilwoman's Wade's testimony, I don't think she was either the Chair or the Vice Chair.

I don't think she had the authority to tell that [244] policeman to do anything. As I read it, and we have had a lot of testimony in here, it is the Chair or, in the Chair's absence, the Vice Chair who had the authority, if you will, as a matter of law, to withdraw the invitation to speak.

And, you know, the rules that came in today say that any member of the commission has a right to request the Chair to enforce the rules, so I think we have got a problem here of did this police officer get direction from someone who was authorized to give him that direction?

Now, there is a case, I think it's out of the Fifth District Court of Appeal – and I may be wrong, and it's the one I referred to earlier about the library – and apparently, in that case, you know, it's amazing how these cases with these statutes they seem to all involve juveniles, because they're lesser crimes, and they're the kind of things that juveniles might be involved in.

But in that particular case, the State proved everything except that the librarian had given the instruction to the police officer. And the Court said

that was required, that's an element, that he had received direction from either the owner or someone with authority to give that direction.

So the concept that you have to have the right direction from the right person, I think, is important. Now, there is a case that talks about actual or apparent [245] authority, and I'm looking at that, too.

MR. BEDARD: Well, plus, Your Honor –

THE COURT: Hold on, now. Hold on. I know I've been longwinded.

MR. BEDARD: I just wanted to interrupt. Ms. Kaufer has a baby, and she wants permission to leave.

THE COURT: Absolutely, of course, anytime. You know that, yes.

So I think we have got a problem here in whether that policeman had authority to do what he did. And my inclination is that, as a matter of law, he didn't have probable cause because he didn't have authority from the right person.

I mean, I want you to think about this and look at it, but I don't think a Council person can give that kind of a direction, I mean, if that's the statute we're dealing with, so I'd like your thoughts on this, to kind of think about it and see where we are.

I want to tell you, it bothers me that we could leave that policeman and say there's really not a law that he's capable of enforcing. It seems to me, on a practical basis, that a City Council has to maintain order, and there must be some law in the Florida statutes that covers this kind of a situation.

You know, I look, and I bet you've seen this, too. [246] Sometimes, you're looking at committee hearings of the United States Congress, you know, and someone stands up with a sign in the back and the – whoever they are, the Capitol Police descend on him and take him out.

And certainly, we hear people yell from the galleries, and that's immediately stopped by the Chair, and if necessary, people are expelled, but what we're looking at here is the right to arrest, you know, and what really is happening.

So here is my point: I'd like to ask you all to think a little bit about this. I have a suspicion that the fact that Ms. Wade did this, that I don't think she had the authority, there was a question whether the Chair was absent, and I think she testified that Vanessa Lee was the Vice Chair, and whether she was sitting there, I'm not sure we really focused on that.

So when we're talking about the unlawful arrest, I think that's what we're going to have to look at and then go from there.

So I just wanted to put that out for you to think about.

MR. BEDARD: Your Honor, could I give you one thing to think about? I don't want to argue.

THE COURT: Yes.

MR. BEDARD: But a criminal analysis versus a [247] probable cause analysis are different, and I think the officer, even if Ms. Wade did not have the authority to do it, if the officer had the reasonable belief because he was getting direction from the Council Chairperson, that satisfies probably cause.

THE COURT: But she's not the Council Chairperson.

MR. BEDARD: No, but he had a reasonable belief that we take direction from the Council if they ask somebody to step away from the podium.

THE COURT: I don't think that will do. It's a good argument, but I don't think that will do it, but let's talk more. I want to hear your thinking about it, and we all need to kind of move in the right direction.

And I hesitate to say this, but I want you to think about this, too. I would be concerned about making the wrong decision on probable cause and finding as a matter of law – let me back up.

I think the Court has an obligation if the facts are such, and they're not disputed, to tell the jury that I have found that the officer did have probable cause or didn't have probable cause. I'm concerned about making a wrong decision that the officer did have probable cause and then have an appellate court look at this and say, Wait a minute, that's the incorrect analysis, and you jumped the gun by doing that, or it should have been a jury question. [248]

I – I mean, there are various levels here. There is the Monell issue and various other things. But if Ms. Wade didn't have the authority to do what she did – and I want to think about what you said about his perceptions as to who is up there and what their roles are, but it would be better to find that there was no probable cause and let the jury go on and analyze the rest of that statute.

So let's think about it a little bit more, and if we can eliminate – if you feel, too, that we can eliminate

those other three statutes and put this statute in front of the jury, if that's what we have to do, that would be a better way to go. I'm trying to simplify this, but also to find something that really is correct in terms of what is the law here that applies.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff December 8, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 13

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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[5:6]

[THE COURT]: I've begun to really look at the state statutes, and we have been talking a lot about trespass after warning. And one of the questions was whether the person who gives the direction, the presiding officer or a councilperson who says, please step aside from the lectern.

But you know, and I was just looking at the statute that I had been cited, which I think is the wrong statute, as I looked at it. It dealt with trespass after warning on property, not a structure.

Whereas the trespass on a structure and certainly the city council chamber would have to be considered

a structure simply requires the person authorized by the owner, presumably the presiding officer, but that becomes a question of termination, I suppose here, whether that person gives the direction, and then someone refuses to depart.

And whether that can be, if you will, the basis of then a police officer who is present and seeing that somebody at the lectern will not step away, whether that justifies a police officer in effectuating an arrest for failure of the speaker to step away from the podium after being told to. [6]

And the only reason I mentioned that is, in other circumstances, you have the police officer giving the warning. But I'm reading that statute correctly, it's not a police officer who gives the warning. It's the owner or the owner's authorized representative, whoever that might be.

And the other statute that I was looking at a little more carefully was the disturbance of a public assembly. And I suppose the first question is, is the city council meeting a public assembly within the meaning of that statute – because, obviously, it talks about religious services and other events like that.

And then I suppose the second question would be, does it incorporate the same concept that the person giving the order to step away is authorized? I would think it does. In other words, if you had someone who had no authority who told the speaker, please step away from the podium, I don't know how the failure to adhere to an unauthorized directive could constitute a disturbance.

So maybe somehow in that you incorporate the notion that the person giving the directive had the

authority to do whatever they said. And then I suppose the second question is, what constitutes a disturbance. And is that a factual question?

When a term is not defined and it's a term of ordinary usage, I guess you normally go to a dictionary. And [7] I suppose once you get that definition, the question here would be, presuming that Mr. Lozman had been given an authorized directive to step away from the podium, that he voiced an objection to doing that, that a police officer who was present in the assembly for the purpose of preserving the peace stepped up and asked him to please step away, and he declined to follow the officer's directive.

Whether those combination of facts, whether they can rise to the level of "disturbing," I think the statute uses the word "disturbs," so as to justify the officer at that point effectuating an arrest for disturbing a public assembly. I don't know.

But I ask you just to think about those, because we're going to have to come to grips, and then what – if they are, what are the jury questions? Is the jury question, you know, whether an officer confronted with all of that, whether that's the kind of disturbance that would justify an arrest?

* * *

[272:11]

[THE COURT]: But we obviously need to get the jury instructions into final shape, and we'll have to have probably a couple more conferences. I'm still working on them myself.

And I'd like very much, if I can, to figure out how to handle the false arrest issue. I'm really thinking that the crime that we ought to focus on is the disturbing the public meeting.

Number one, I want to be sure that a city council meeting fills within that, and I understand that there's at lease [sic] one case that actually involves a city council meeting.

I'm interested in your thoughts about whether the order to depart – and I recognize that comes from the trespass statute, but I'm interested in your thoughts about whether we have to look at the direction that was given to Mr. Lozman was a legitimate direction.

[273]

I mean, it seems to me, when you're evaluating whether Mr. Lozman caused a disturbance, you have to look at the legitimacy of what he was doing. And then you get back into Ms. Wade and was she authorized to tell him to step away from the podium and so on.

I don't have an answer to that, but I think we need to talk about that. But it seems to me that is really – if we had to pick a statute, that really is the statute that I think is at play here.

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[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff December 9, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 14

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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[257:21]

[THE COURT]: I want to tell you by way of kind of a heads-up. I'm at the point where I'm well-satisfied that if there's any crime, it's the disturbance crime, disturbing a public meeting, public assembly, and my inclination is to allow the jury to make their own judgment call whether everything that [258] Officer Aguirre was observing whether that would give a reasonable officer in possession of all of those facts probable cause to believe that Mr. Lozman was creating a disturbance of that meeting sufficient to arrest him for that crime of disturbing a public meeting.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff December 11, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 16

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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[51:6]

DIRECT EXAMINATION

BY MR. LOZMAN:

Q. Good morning, Mr. Davis. What is your profession?

A. **I'm a city councilman. I also work for the school district.**

Q. You're a city councilman for what city?

A. **City of Riviera Beach.**

Q. How long have you been a city councilman?

A. **Almost two years. Three months away from two years.**

* * *

[57:4]

THE COURT: Right. I think what you're trying to ask, Mr. Lozman, is whether Mr. Davis knows whether there was any subject limitation regarding public comment between 2006 and 2010, if Mr. Davis knows that from his own personal knowledge.

A. **No.**

THE COURT: No, there wasn't or no, you don't?

A. **During public comments?**

THE COURT: Right.

A. **No, sir.**

THE COURT: No, what, though? You don't know or no, there was no limitation?

A. **There was no limitation to public comment.**

THE COURT: All right. All right. There you go.

BY MR. LOZMAN:

Q. Can you explain what no limitation mean?

A. **Just when you come to the microphone and you're speaking, you have your three minutes to really express yourself on how you feel about what's going on with reference to the City, community, just whatever is going on at that time. There is rules as far as how you – what you can say as far as profanity. But it's very open to what you want to speak to** [58] **public comment because the public – just come express yourself.**

Q. Can you talk about county issues?

A. **Yes.**

Q. Can you talk about if the Chinese wanted to send a rocket to the moon?

A. **Yes.**

Q. If you wanted to, could you go read a nursery rhyme for three minutes as long as you did not use profanity?

A. **As long as he doesn't exceed his three minutes.**

MR. LOZMAN: That's all I have.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff December 15, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 18

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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[147:22]

INSTRUCTIONS.

THE COURT: You must follow the law as I explain it even if you happen not to agree with the law, and you must follow all of the instructions as a whole. You must not [148] single out or disregard any of the instructions on the law. Now, the fact that a governmental entity or agency is involved as a party, must not affect your decision in any way.

* * *

[156:12]

[THE COURT]: Now, in this case, Mr. Lozman is claiming that Riviera Beach officials and employees retaliated against him for engaging in constitutionally protected speech and conduct. So, in other words, Mr. Lozman is saying that at certain times, whether in City Council meeting or outside, it really doesn't make a difference, Mr. Lozman is claiming that he spoke against the marina redevelopment program. And Mr. Lozman is also saying that he spoke publically [sic] about his perception of corruption in the City of Riviera Beach. And he's also saying that he filed what we call a Government in the Sunshine lawsuit.

Now, everybody agrees that those kind of comments, whether they're done in the public, or if they're done in a City Council meeting, assuming they're done within the time [157] limits and so on, they are protected by the First Amendment of the United States Constitution. There's no question about that.

So, in this case Mr. Lozman is claiming that various city officials and employees, that they retaliated against him. They took action against him because he had engaged in constitutionally protected speech and constitutionally protected conduct.

Now, to prove that he was retaliated against in violation of his First Amendment rights, Mr. Lozman must prove all of the following elements by a preponderance of the evidence. That is more likely true than not true.

Number one) that he engaged in speech or petition conduct that was protected under the First Amendment.

Two) that a City official or employee intentionally took retaliatory action against him.

Three) that the City official or the employee acted under color of law when he or she retaliated against or punished Mr. Lozman, and four) that there was a causal connection between the retaliatory action and the protected speech or conduct. So there are four things that Mr. Lozman has to establish. Now I want to break those up and talk about them. Okay?

You remember the first is that Mr. Lozman engaged in constitutionally protected speech or conduct. I want to [158] instruct you that Mr. Lozman's public criticism of the City's proposed marina redevelopment project and any views he expressed about perceived public corruption in the City of Riviera Beach were protected under the First Amendment as was his conduct in filing a government in the Sunshine lawsuit against the City. So, therefore, that first element that I mentioned, that's been established. No more proof needs to come in on that. And both sides agreed with that. Both sides agree the first element has been established.

Now, the second is that a City official or employee intentionally took retaliatory action against Mr. Lozman. In other words, that either official or an employee did something to Mr. Lozman because they were trying to get back at him or punish him because he spoke against the marina redevelopment project or because he spoke about his perception of public corruption in Riviera Beach, or because he filed a government in the Sunshine lawsuit.

Now, on this second element, a retaliatory action is defined as one which would likely deter a person of

ordinary firmness from exercising his or her First Amendment rights. To decide whether an action constituted retaliatory conduct in the context of this case, you must determine whether the complained of action would deter a person of ordinary firmness from exercising their protected speech and/or engage in their protected conduct. [159]

A person of ordinary firmness means a similarly situated reasonable person in Mr. Lozman's shoes. I want to tell you this is an objective standard but in determining whether this standard has been met, the jury may consider whether Mr. Lozman himself was deterred from exercising his First Amendment rights.

Now, the third element, that the City official or employee was acting under color of law. Well, what does that mean? It really means that a City official or employee in doing whatever they did, they acted in the course of their employment as a governmental official.

Now, again, I want you to know that both sides agree that everybody who took any action in this case with one exception acted under color of law. And the one exception, and it creates a jury question for you folks to decide is Mr. Gilmour. You remember Mr. Gilmour, the golf cart driver? The question is, number one) did he do what Mr. Lozman claims he did? And if he did it, did he do it in his capacity as a City employee or was he just someone who was a tenant and just did something, but not as a City employee? So that's the one factual question. Other than that, everybody agrees that every other alleged actor acted under color of law.

And, of course, the fourth element is that there's a connection between a retaliatory animus and Mr.

Lozman's [160] protected speech or conduct. So to establish this fourth element, that is a causal connection between intentional retaliatory conduct and constitutionally protected speech, and/or conduct, Mr. Lozman must show that the City employee or the City official who was involved was subjectively motivated. In other words, what was in their mind that they were subjectively motivated to take the adverse action, the retaliatory action, because of Mr. Lozman's protected speech or conduct.

And you remember – I know I've repeated this a lot during the trial – the constitutionally protected speech and conduct is talking against the marina redevelopment, opposing that, talking about Mr. Lozman's perception of public corruption in Riviera Beach, and the filing of the Government in the Sunshine Act. Those are the three things that Mr. Lozman has alleged in his complaint were the constitutionally protected acts that he took.

To make this connection, it is sufficient to show that the protected speech or conduct was a substantially motivating factor for one or more of the alleged retaliatory acts.

Now, I want to be clear, and you will see when we go through this allegation of retaliatory conduct, they're just multiple of acts and each one has to be looked at individually. Each one has to be looked at individually. [161]

So I was saying that Mr. Lozman has to prove that the protected speech or conduct was a substantial motivating factor for one or more of the alleged retaliatory acts, that is, the impermissible animus does not have to be the only motivating factor, but it

must be a substantial one. A substantial motivating factor means a significant factor. That is one that played a substantial part in triggering the alleged retaliatory action.

If you find by a preponderance of the evidence that Mr. Lozman – that Mr. Lozman's protected conduct or speech was a motivating factor behind any one or more of the alleged retaliatory acts, then the burden shifts to the City to show that it would have taken the same action in the absence of protected conduct in which case the City cannot be held liable.

In considering Mr. Lozman's First Amendment retaliation claim, it can be subdivided into four parts and I'm going to talk about each one of them individually. As I listen to the evidence and as you listen to it and as I read Mr. Lozman's complaint, he brought a retaliatory claim, that is, he claims his First Amendment rights were violated because people acted in retaliation, but as you looked at it, there really are four separate categories and here is how I divide them.

* * *

[176:4]

[THE COURT]: We're getting close to the end of retaliation and we're talking about what happened in that City Council meeting on November 15, 2006. You remember that City Council meeting? I think Council woman Wade was presiding at the meeting and Officer Aguirre – how do you pronounce the gentleman's name?

MR. BEDARD: Aguirre.

THE COURT: Aguirre. Officer Aguirre arrested Mr. Lozman. Now, I want you to know as a matter of law, an arrest occurs the minute somebody has been restrained and there's no question that when that police officer put the handcuffs on Mr. Lozman as a matter of law, that constituted an arrest. A reasonable person would know at that point they were not free to move away or so on. So there's no question, we all agree Officer Aguirre, he did arrest Mr. Lozman. But let's talk about this concept of false arrest. And I hope it's not too confusing because Mr. Lozman has alleged it really twice in this case, and that's totally appropriate, there's nothing wrong, but first in this instance, Mr. Lozman is alleging that the policeman arrested Mr. Lozman as a retaliatory measure.

Do you remember in all these retaliation claims [177] we're looking at what's in the mind of the actor? What's in the mind of the City Council person? What's in the mind of the person who initiates the admiralty proceeding? What is in the mind of the arresting officer when he turned to arrest him?

Mr. Lozman is claiming in this particular claim that the police officer had a retaliatory motive to strike back at Mr. Lozman because Mr. Lozman had engaged in constitutionally protected speech, speaking against the marina, speaking about public corruption, in Riviera Beach, and filing that Government in the Sunshine action.

So in order to prove that he was retaliated against in violation of his First Amendment rights, Mr. Lozman, as I've said repeatedly, he needs to prove all of the elements listed on page 5 for retaliation. And then there's one additional element that he has to prove. He has to prove that Officer Aguirre, the

arresting officer, lacked, that he did not have what is called probable cause to believe that Mr. Lozman had or was committing a crime. Let me go through this.

Mr. Lozman has to prove, number one) that he had engaged in speech or conduct protected by the First Amendment. We all agree that he did that in the past. That he engaged in it. And you can decide whether he was engaging in protected speech at that particular meeting. [178]

Second) Mr. Lozman has to prove that Officer Aguirre, the Riviera Beach police officer who arrested him, that he was motivated to take this action, that is, he was motivated to arrest Mr. Lozman because the police officer had an impermissible animus, an impermissible motive to retaliate against Mr. Lozman for having engaged in constitutionally protected speech or conduct, and third) that the arresting officer acted under color of law, and fourth) that the arresting officer lacked probable cause to believe that Mr. Lozman had or was committing a crime.

I told you repeatedly we all agree that Mr. Lozman's speech criticizing the marina development, speech about perceived public corruption in Riviera Beach, and his action in filing the Government in the Sunshine suit, no question that's protected. I've previously talked about the concept of retaliation and that applies here.

Again, there's no question that the police officer when he made that arrest, he was acting under color of law. He had the right as a police officer to effectuate an arrest, so when he does it he's acting under color of law.

The real question is, did he have the right to arrest Mr. Lozman? Did he have the legal justification to arrest Mr. Lozman? Let me tell you this, a police officer can arrest a person if the police officer has what is called probable cause to believe that the person has committed or is [179] committing an offense.

An officer has a probable cause to arrest a person without a warrant when, under the facts and circumstances within the officer's knowledge, based on reasonably trustworthy information, would cause a reasonable police officer to believe that a person has committed, is committing or is about to commit a crime.

Now I want you to know that the standard here is called an objective standard. You remember I said we're looking at what a reasonable police officer would have done so we're really not looking into Officer Aguirre's mind. But we're looking and we're saying what would a reasonable police officer who saw everything that was happening at that event would that police officer have had probable cause to arrest Mr. Lozman? Would that police officer have had probable cause to believe that Mr. Lozman had committed, was committing, or was about to commit an offense? Well, you may say, what offense are we talking about, what conceivable offense could have existed, and I want to instruct you on this point on Florida law.

Under Florida law any person who willfully interrupts or disturbs any assembly of people met for any lawful purpose commits what is called a crime of disturbing a lawful assembly. I want to instruct you, first, that a City Council meeting is, in fact, as a

matter of law, a lawful [180] assembly within the meaning of this statute.

For a police officer to have probable cause to arrest a person for the crime of disturbing a lawful assembly, the police officer must have reasonable grounds to believe, number one) that an individual was acting with the intention that his behavior impeded the successful functioning of the assembly, or with reckless disregard of the effect of his behavior.

Two) that the individual's acts were such that a reasonable person would expect them to be disruptive. And three) that the individual's acts did, in fact, significantly disrupt the assembly.

I want to be very clear. Disturbed does not mean simply annoy somebody. That's not good enough at all. We're talking about acts that significantly disrupt a public assembly. And when you think about, we're really stepping back a minute and we're saying, did that police officer when he made the decision – or excuse me, we're not saying that. We're saying would a reasonable police officer who viewed everything that was taking place, would that police officer have grounds to believe that Mr. Lozman, by his acts, was causing a significant – that he was willfully causing a significant disruption of that public assembly of that meeting. That's what – and we're looking at what would – would a reasonable police officer have that. [181]

Now, it's Mr. Lozman's burden to prove in this case that a reasonable police officer would not have come to that conclusion. It is Mr. Burden – Mr. Lozman's burden on this particular claim to prove that the police

officer did not have probable cause and he lacked probable cause.

As I've said repeatedly, if Mr. Lozman does not prove all of the elements on page 5, for retaliation, plus on this one, lack of probable cause, then he's not established his claim. If he has proven all of those, including probable cause, then you go on to consider whether there is grounds to hold the City liable and I'm going to come to that.

* * *

[199:25]

[THE COURT]: Now we're turning to a very important concept, and [200] I say it's important because it's kind of different from what we normally have experienced in life. You remember I mentioned a couple of times that in ordinary circumstances, if an employee of a company does something and they're negligent, the company is responsible for their negligence. The legal term of that is called respondeat superior or sometimes they call it vicarious liability. It just means the employer is responsible for what the employees do if it's done in the course and scope of its employment. It makes good common sense, but because we're dealing with municipalities, the Supreme Court has carved out some very, very special rules that deal with what has to be established before a municipality would be held liable for a constitutional violation that is caused by one of its employees.

In other words, a City employee, if they commit a constitutional violation, if they violate someone's rights. Now, of course, the first analysis would be did they violate the rights in the first place, that's for you

to decide. But there are very special rules that come into play that if someone's rights were violated, what must be established before we will hold a municipality liable for that violation? This only applies to the constitutional claims. It only applies to the three constitutional claims in this case.

So let's talk about this in a little more detail. [201] Mr. Lozman claims that the City of Riviera Beach is responsible for any and all of his constitutional rights being violated by one or more officials or employees of the City of Riviera Beach. If the jury finds that Mr. Lozman has failed to prove one or more constitutional violations, then you need not consider the question or issue of municipal liability.

However, if you find that Mr. Lozman has established one or more constitutional violations, then you must consider the issue of municipal liability as it applies to each and every constitutional violation.

Do you remember when I said in the retaliation area you need to look at every single act and make a judgment as to whether Mr. Lozman has proven all of the elements regarding that particular person, that particular act?

Well, the same thing holds true on municipal liability. In other words, if you have found a constitutional violation, then you need to go through this analysis regarding the municipal liability as to each individual act. You can't group them together. You've got to look at them one by one by one and make your judgment. You must engage in this analysis separately and independently for each and every constitutional violation that you might find.

The City of Riviera Beach is not liable for [202] violating Mr. Lozman's constitutional rights simply because it employed the official or employee who took down the complaint – who took the complaint of action against Mr. Lozman.

So, in other words, this is radically different from how we hold a company liable if one of its employees engages in a negligent act. The Supreme Court has said that we need to treat municipalities differently, and so they are not liable simply because they happened to employ the person who committed a constitutional violation.

Rather, the City of Riviera Beach would be liable to Mr. Lozman only if Mr. Lozman proves that an official policy or custom of the City of Riviera Beach directly caused his injuries. Put another way, the City of Riviera Beach is liable if its official policy or custom was the moving force behind Mr. Lozman's injuries.

Well, let's first look at what is an official policy or custom. That means, first, a rule or regulation created, adopted or ratified by City Council of Riviera Beach or a policy statement or decision by the City of Riviera Beach's policy maker. In this area – one of the key words in this area of the law is who is the policy maker? We all agree that for a redevelopment plan, the policy maker is its City Council. Okay. And I'm going to come back to that and explain a little bit more about that. [203]

So a policy statement or decision made by the City of Riviera Beach's policy maker, i.e., the City Council. And C) a practice or course of conduct that is so widespread that it has acquired the force of law even if the practice has not been formally approved.

You may find that an official policy or custom existed if there was a practice that was so persistent, widespread or repetitious that the City of Riviera Beach's policy maker either knew of it or should have known of it.

Okay. I've talked about the City of Riviera Beach's policy maker. Let's focus on that. The City Council of Riviera Beach is the policy maker for the City of Riviera Beach. And the concurrence of a majority of the City Council is required to enact a policy or ordinance of the City. In assessing whether the City Council harbored the requisite retaliatory animus, I want to instruct you that Mr. Lozman must prove that three out of five Council members who directed, authorized or agreed to the conduct that Mr. Lozman is complaining of, harbored an impermissible animus or motive. That is, that each of those Council members intended to retaliate against Mr. Lozman for having engaged in constitutionally protected speech or conduct.

Another way that Mr. Lozman may establish the liability of the City for the conduct of its officials or employees is by showing that the City Council ratified a [204] constitutional violation, committed by a city official or employee.

To establish municipal liability under this theory, Mr. Lozman must prove each of the following elements by a preponderance of the evidence. First) that a City official or employee deprived Mr. Lozman of his rights under the Constitution. Second) that the City official or employee acted under color of law. Three) that the City Council also acted under color of law, and Four) that the City Council ratified the officials or the employee's act and the basis for it. And by ratification

I mean that the City Council knew and specifically approved of the employee's acts and the employee's discriminatory animus.

So for ratification to exist, the City Council needs to know what the employee did, that the employee acted with a discriminatory animus, and that the City Council acted with a discriminatory animus in allowing it to go forward.

If you find that Mr. Lozman has proved all of the elements required to prove municipal liability under any one or more of the theories that I've mentioned, and if you find that the plaintiff has proved all of the elements that he is required to prove to establish one or more of the constitutional violations at issue in this case, then your verdict should be for Mr. Lozman on that particular constitutional claim and you should proceed to consider the [205] matter of damages.

If, on the other hand, the plaintiff has failed to establish each of the elements required to establish municipal liability for a constitutional deprivation under at least one of the theories that I mentioned on municipal liability, then your verdict should be for the defendant City on all of the constitutional claims.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach
CASE NO. 9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff December 16, 2014

vs.

CITY OF RIVIERA BEACH,

Defendant.

TRIAL DAY 19

BEFORE THE HONORABLE
DANIEL T.K. HURLEY,
UNITED STATES DISTRICT COURT JUDGE

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* * *

[2:1]

PROCEEDINGS

(The following proceedings were held in open court.)

* * *

[32:18]

[THE COURT]: The other thing, and I hope I mentioned this to you, but in this case, you know, there is, as I said, a series of claims, and we want to ask you to look at each claim all by itself, make up your mind on that claim, and then move onto the other.

We recognize that there are some common issues in the claims and obviously you can consider how you

view that issue previously as you're moving on, but we want to ask you [33] to please look at each claim all by itself, you make up your mind whether that claim has been established. You make up your mind whether, if it has been established, whether municipal liability, a ground for municipal liability has been established. And if you answered both yes to those, then you would move on to the issue of damages.

* * *

[56:10]

VERDICT

COURTROOM DEPUTY CLERK: United States District Court, Southern District of Florida, Case No. 08-80134 Civil, Fane Lozman versus the City of Riviera Beach, a Florida municipal corporation.

On the claim for First Amendment retaliation, did the plaintiff, Fane Lozman, prove by a preponderance of the evidence that the City official or employee retaliated against him in violation of his First Amendment rights as alleged in segments A, B, C and/or D, and that the City of Riviera Beach is liable for the retaliatory action based on one of the grounds for municipal liability as instructed by the Court? Answer: No.

On the claim for violation of the Fourth Amendment, did the plaintiff, Fane Lozman, prove by a preponderance of the evidence that a municipal police officer deprived [57] Mr. Lozman of his rights under the Fourth Amendment by arresting Mr. Lozman without probable cause, and that the City of Riviera Beach is liable for the Fourth Amendment

violation based on one of the grounds for municipal liability as instructed by the Court? Answer: No.

On the claim for violation of the Fourth Amendment —

THE COURT: Fourteenth.

THE COURTROOM DEPUTY: – the Fourteenth Amendment, did the plaintiff, Fane Lozman, prove by a preponderance of the evidence that the City official or employee violated his rights under the Fourteenth Amendment by initiating an admiralty action to target and punish Mr. Lozman for having engaged in constitutionally protected speech and conduct, and that the City of Riviera Beach is liable for the Fourteenth Amendment violation based on one of the grounds for a municipal liability as instructed by the Court? Answer: No.

On the state law claim for unlawful arrest, did the plaintiff, Fane Lozman, prove by a preponderance of the evidence that a municipal police officer initially and illegally retained Mr. Lozman without probable cause on November the 15th, 2006? Answer: No.

On the state law claim for battery, excessive force, did the plaintiff, Fane Lozman, prove by a preponderance of the evidence that a municipal police officer [58] in arresting Mr. Lozman on November the 15th, 2006, used excessive force? Answer: No.

So say we all, dated the 16th day of December, 2014, at the United States Courthouse, West Palm Beach, Florida.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 08-80134-CIV-DTKH

FANE LOZMAN,

Plaintiff,

v.

CITY OF RIVIERA BEACH, a Florida Municipal Corporation,

Defendant.

_____/

VERDICT

We, the jury, unanimously find as follows:

On the claim for First Amendment retaliation:

1. Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a city official or employee retaliated against him in violation of his First Amendment rights as alleged in segments (a), (b), (c) and/or (d), and that the City of Riviera Beach is liable for the retaliatory action based on one of the grounds for municipal liability as instructed by the court?

Yes _____ No ___X___

(If you answered "No" to the above question, please skip the questions 1(a), 1(b), 1(c) and 1(d) and go to question 3 below. If you answered "Yes" to the above question, please answer questions 1(a), 1(b), 1(c) and 1(d) below.)

1(a). Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a city official or employee retaliated against him in violation of his First Amendment rights as alleged in subsection "a" and that the City of Riviera Beach is liable for the retaliatory action based on one of the grounds for municipal liability as instructed by the court?

Yes _____ No _____

1(b). Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a city official or employee retaliated against him in violation of his First Amendment rights as alleged in subsection "b" and that the City of Riviera Beach is liable for the retaliatory action based on one of the grounds for municipal liability as instructed by the court?

Yes _____ No _____

1(c). Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a city official or employee retaliated against him in violation of his First Amendment rights as alleged in subsection "c" and that the City of Riviera Beach is liable for the retaliatory action based on one of the grounds for municipal liability as instructed by the court?

Yes _____ No _____

1(d). Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a city official or employee retaliated against him in violation of his First Amendment rights as alleged in subsection "d" and that the City of Riviera Beach is liable for the retaliatory action based on one of the grounds for municipal liability as instructed by the court?

Yes _____ No _____

2. If you answered "Yes" to question 1(a), or 1(b) and/or 1(d), please list the amount of compensatory or nominal damages to be awarded to Mr. Lozman.

$ _____ – Past pain and suffering (incident on 10/21/2009)

$ _____ - Nominal damage of $1.00 for each constitutional violation

On the claim for violation of the Fourth Amendment:

3. Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a municipal police officer deprived Mr. Lozman of his rights under the Fourth Amendment by arresting Mr. Lozman without probable cause, and that the City of Riviera Beach is liable for the Fourth Amendment violation based on one of the grounds for municipal liability as instructed by the court?

Yes _____ No ___X___

(If you answered "No" to the above question, please skip the next question and go to question 4 below. If you answered "Yes" to the above question, please answer question 3(a) below.)

3(a). If you answered "Yes" to question 3, award Mr. Lozman nominal damages in the sum of $1.00.

$ _____

On the claim for violation of the Fourteenth Amendment:

4. Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a city official or employee violated his rights under the Fourteenth Amendment by initiating an admiralty action to target and punish Mr. Lozman for having engaged in

constitutionally protected speech and conduct, and that the City of Riviera Beach is liable for the Fourteenth Amendment violation based on one of the grounds for municipal liability as instructed by the court?

Yes _____ No ___X___

(If you answered "No" to the above question, skip the next question and go to question 5 below. If you answered "Yes" to question 4 OR you answered "Yes" to question 1(c), please answer question 4(a) below.)

4(a). If you answered "Yes" to question 4 OR to question 1(c), please list the amount of money Mr. Lozman is entitled to receive as compensation for the fair market value for his floating home and to compensate him for attorney's fees incurred to appeal the admiralty court's decision.

$ _____ –for the floating home

$ _____ –attorney's fees

On the State law claim for unlawful arrest:

5. Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a municipal police officer intentionally and illegally restrained Mr. Lozman without probable cause on November 15, 2006?

Yes _____ No ___X___

(If you answered "No" to the above question, please skip the next question and go to question 6 below). If you answered "Yes" to question 5, please answer question 5(a) below.)

5(a). Please specify the amount of money Mr. Lozman is entitled to receive for having been intentionally and illegally restrained.

$ _____

On the State law claim for battery (excessive force):

6. Did the Plaintiff, Fane Lozman, prove by a preponderance of the evidence that a municipal police officer, in arresting Mr. Lozman on November 15, 2006, used excessive force?

Yes _____ No ___X___

(If you answered "No" to the above question, please skip the next question and sign and date the verdict form. If you answered "Yes" to question 6, please answer question 6(a) below.)

6(a). Please specify the amount of money Mr. Lozman is entitled to receive for having been subjected to excessive force.

$ _____

SO SAY WE ALL.

Dated this 16 day of December, 2014, at the United States Courthouse in West Palm Beach, Florida.

s/ [redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 08-80134-CIV-HURLEY

FANE LOZMAN,

Plaintiff,

v.

CITY OF RIVIERA BEACH,

Defendant.
_____/

FINAL JUDGMENT

THIS CAUSE came before the Court and a jury, the Honorable Daniel T. K. Hurley, presiding, resulting in a jury verdict in favor of the defendant on December 16, 2014 [ECF 728].

The issues having been duly tried and the jury having duly rendered its verdict in this matter, it is now **ORDERED AND ADJUDGED**:

1. The plaintiff, **FANE LOZMAN**, shall take nothing by this action, and the defendant, **CITY OF RIVIERA BEACH**, shall go hence without day.

2. The court reserves jurisdiction to determine the issue of taxation of costs.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 18th day of December, 2014.

_____
Daniel T. K. Hurley
United States District Judge

cc. all counsel
Fane Lozman, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 08-CIV-80134-HURLEY

FANE LOZMAN,

Plaintiff,

v.

CITY OF RIVIERA BEACH,

Defendant.

_____/

FILED by MM D.C.
SEP 11 2015
STEVEN M. LARIMORE
CLERK, U.S. DIST. CT.
S.D. of FLA – MIAMI

PLAINTIFF'S NOTICE OF FILING TRIAL EXHIBITS FOR PURPOSES OF APPEAL

Plaintiff Fane Lozman hereby files this Notice of Filing Trial Exhibits for Purposes of Appeal and certifies that the below listed and attached exhibits are the same or identical to the exhibits submitted at trial. These exhibits are being filed for purposes of use and reference for the present appeal of this case. The exhibits are as follows:

1. Plaintiff's Trial Exhibit No. 1, transcript of City of Riviera Beach executive session.

* * *

Respectfully Submitted,

FANE LOZMAN
By: /S/

Fane Lozman
2913 Avenue F
Riviera Beach, Florida 33404
Phone: (786) 251-5868
sp500trd@yahoo.com

EXHIBIT 1

Plaintiff's Trial Exhibit No. 1, transcript of City of Riviera Beach executive session

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* * *

[1]IN RE: SCHEDULED CLOSED EXECUTIVE SESSION

CASE: FANE LOZMAN AND VIRGINIA MERCHANT VS. CITY OF RIVIERA BEACH

CASE NO.: 502006CA005632XXXXMBAD

SPECIAL COUNSEL: DON STEPHENS, ESQUIRE

* * *

Wednesday, June 28, 2006
Riviera Beach, Florida
5:47 p.m. – 6:50 p.m.

APPEARANCES:

ANN ILES, CHAIRPERSON, DISTRICT 5

JAMES "JIM" JACKSON, CITY COUNCILPERSON, DISTRICT 4

ELIZABETH "LIZ" WADE, CITY COUNCILPERSON, DISTRICT 3

NORMA DUNCOMBE, CITY COUNCILPERSON, DISTRICT 2

VANESSA LEE, CHAIR PRO TEM

PAMELA H. RYAN, CITY ATTORNEY

WILLIAM E. WILKINS, CITY MANAGER

MICHAEL D. BROWN, MAYOR

MAUREEN HALL, COURT REPORTER

[2]

(Thereupon, the following proceedings were had):

— — —

MS. ILES: Okay. Are you ready now?

Okay. Ladies and gentlemen, we are getting the show on the road. Do I have to say anything?

MS. RYAN:We have to open up a regular meeting.

MS. ILES: Oh.

MS. RYAN:And then close it for the closed executive session.

MS. ILES: Okay. I call this regular special meeting to order at 5:47, Wednesday, June 28, and we don't need roll call, do we?

MS. WADE: Do we recess or close?

MS. RYAN:Let me just say, present at this special meeting are councilpersons Duncombe, Jackson, Wade and Chairperson Iles.

In addition, the city manager, the city attorney and special counsel Don Stephens.

Now you can just close the meeting.

MS. WADE: Close or recess?

MS. RYAN:Close.

MS. WADE: I move to adjourn.

MR. JACKSON: Second.

[3] MS. ILES: Okay. Moved and seconded. We are now adjourned. We are going to open up our closed executive session.

Okay. Got to do roll call again.

MS. RYAN:Present are the same persons who were at the —

MS. ILES: Special.

MS. RYAN:— special meeting.

Madam chair, we are here to discuss two new lawsuits that have been filed against the city and one against the CPA, in addition to the city. We will take them in turn.

The first one we will discuss is Fane Lozman and Virginia Merchant versus the City of Riviera Beach. We have already retained special counsel, Don Stephens, who will give us a brief summary of the case, and we will discuss our strategy.

We are looking for some strategy recommendations from the council in this case, and we will be doing the same thing on the second case as well.

We will go ahead and start with the case that was just filed against us; as you know, as it relates to the May 10, 2006 special city council meeting. [4]

MR. STEPHENS: Good evening.

MS. ILES: Good evening.

MR. STEPHENS: I don't know how much information you all want, but I am just going to try to break it down as succinctly as I can.

Basically, Lozman and Merchant filed a lawsuit that is somewhat confusing. It is really a lawsuit

pursuant to violation of the Sunshine Statute or Sunshine Law, but they also ask for declaratory relief and injunctive relief.

So, what we have done is we filed a motion to dismiss the lawsuit, because the issues regarding declaratory, they didn't allege the proper elements to state a cause of action for declaratory relief, nor did they allege the proper elements for a permanent injunction, which is what they are trying to do.

It is clear what they are trying to do. I mean, they are basically saying, because the May 10 meeting didn't give them enough notice, they want The Court to step in and declare, number one, that the resolution and the contract are void, but they also want The Court to issue a permanent injunction prohibiting the council from entering into such agreement.

[5] And they are not dealing with the new bill that the governor signed, but they are, in a sense, saying that this meeting was sort of hastily and quickly.

You know, basically what they are trying to do is say this meeting was put together without giving proper notice in order to beat the governor in signing that bill.

And in researching some of the cases, there are no — there are no cases that say that the 24 hour notice you gave would be adequate notice, and there is no cases that say the 24 hours you gave would be inadequate.

There are cases that say an hour-and-a-half notice is inadequate, and there are cases that say three days notice is adequate, but you certainly not only just gave

notice in terms of posting things, but that was also the way that things were routinely done.

That was also — in fact, in speaking with the clerk, she also said that she actually faxed a notice to the Palm Beach Post. She also said that on Channel 18 that the notice was also typed into, would come up on Channel 18, so everyone within the city can look on there and see that there was [6] a meeting coming up.

Not only that, the notice was passed out at the CRA meeting, and one of the guys who was complaining is Fane Lozman. He was at the CRA meeting, and one of the grounds for our dismissal was that he actually got actual notice.

There is a case that says, if someone has personal notice, then they can't file a lawsuit saying that they didn't get notice or that the Sunshine Law was violated.

So, I mean, the city really has — I mean, you know, I can't promise you that The Court is going to agree with me, but the city really has given notice, and the city did not, you know, just have a meeting with one little piece of notice posted out front.

I mean, there was — the notice was passed around to different people's offices. It was on TV, you know, and it was sent to The Post. The Post could have, actually could have called the press, if they wanted to call the television stations, or they could have posted something in their newspapers the next morning.

So, you know, this is one of those cases where they really are upset, obviously, because of [7] what is at stake, and the case law is that you have to give reasonable notice no matter what the meeting is.

Just because this is a very important issue doesn't mean that you got to give some special notice because of the gravity of what we are dealing with.

So, these people were saying basically because of what we are dealing with, that you should have given them a week's notice. But most of the arguments, quite frankly, that they were making or would be making, some of these same people made those arguments in front of you at the CRA meeting.

So, I mean, I think that what this is going to boil down to is the Judge is going to have to make a decision as to whether or not the notice that was given, whether or not that was reasonable notice.

And I, you know; and again, I think that, you know, this is not something that was done just for this situation, which I think is good.

I mean, I think the city has been doing the same type of notice for a period of time, and the city didn't deviate with this matter at all.

[8] I mean, it — you know, they are not asserting —

I mean, they are not showing anything, or they haven't alleged anything that which would prove to me or anyone else that you went out of your way to have a secret meeting, which is what most of the Sunshine violations are for is when two people go have lunch together and start talking about what they are going to do at a public meeting. That didn't happen here.

There are no such allegations, and I think one of the strong points is this, and that there is a Sunshine manual that is published I believe by the Attorney General's office that said, if you are going to call a

special meeting, you have to give at least 24 hour notice.

So, you have met those things, I mean; but, you know, obviously, this is going to boil down to whether or not a Judge believes that you gave reasonable notice.

I don't believe that they are going to be able to cite to anything specific to show that the notice was unreasonable, and I don't believe we are going to be able to cite to anything to show that we absolutely did the right thing.

[9] I think it is going to boil down to a Judge looking at this and making a determination but —

MS. WADE: I have a statement. The meeting preceding, I think it was the CRA meeting where it was discussed, and the mayor said we could call a special meeting.

MS. DUNCOMBE: Public meeting.

MS. WADE: A public meeting.

MR. STEPHENS: Right.

MS. WADE: That was stated in front of Mr. Lozman and all of the petitioners except the lady from the Sea Shell. But I don't know who she is.

MR. STEPHENS: I think you actually said that there was another meeting following, because I recall, from listening to the tape, that — I think it was Councilmember Lee was saying that maybe there was not going to be something that was going to happen afterwards, but then I think you interrupted her and said no, that's not right.

MS. WADE: Yeah.

MR. STEPHENS: But, anyway, Mr. Lozman states in this that he got notice at the CRA meeting that there was a meeting, so I think anybody who is at the CRA meeting knew that there was a meeting. [10]

MR. LEE: Excuse me. Let me interrupt you. The mayor, Michael Brown, came in.

MS. WADE: The point I am making is, they are alleging the Sunshine violation, and my recollection of all that I have gone through here at the city, like you said, it has to be two or more meetings to discuss what we are going to vote on.

The meeting, in essence, for the city, was called by one person, so we can't say Sunshine there, because the mayor has that authority.

I was not necessarily in favor of the meeting, but I attended the meeting, and I worked with you all, because that's what we are trying to do. It was known from the time we left Tallahassee as to what the city had to do, and as far as the Sunshine violation now, I have personally seen Mr. Lozman with the Roberts Rule and the Sunshine book in his hands, so he is totally aware.

My only fear, and we have gone through this, and I guess Michael can attest to this, but the police department, a lot of times a Judge rules against us incorrectly because of the climate, you know, the climate, okay. But it is very clear [11] that if no one else was aware of the meeting, he was.

MR. STEPHENS: Well, definitely he admits – He admits that he was aware of the meeting. He alleges something that doesn't appear to be consequential, but

he said that he was kicked out, that he wasn't allowed to come back into the meeting, because he was kicked out of the CRA meeting, you know.

MS. WADE: Okay. Well, does – are you aware of the fact that these microphones and the cameras broadcast outside and downstairs?

MR. STEPHENS: No.

MS. WADE: Well, he still had an opportunity to see what was going on.

MR. STEPHENS: Well, he is complaining about it being closed, and they are attacking the notice in a variety of ways. I mean, they are saying about the time. They are also saying about, you know, they incorrectly stated in their complaint that it was only posted here, and that's not –

MS. WADE: And we can prove otherwise.

MR. STEPHENS: And that's not true, so they are talking about the manner in which it was posted or communicated to the public, and they are [12] talking about the amount of time.

Basically what they are doing is, you know, they are trying to allege everything they can and throw everything they can in here to say, this was a bad meeting, but the Sunshine violation can be two people meeting on their own about something that is going to come before the council, but it can also be the council having a meeting after having given insufficient or unreasonable notice, and that's what really what we are talking about is, whether or not the notice was sufficient.

And I think the fact that there is no case law that says that what you did is clearly wrong, to me that, you know, quite frankly, there should be a presumption that maybe he was right, because there is nothing that said that it was clearly wrong.

MS. WADE: Would it be too much work to go back and pull every, I would just say the last five or six special meetings that we've had to show just how much notice was given on those, because we have had quite a few meetings that was only 24 hour notice.

MS. RYAN:Right, and I think that if it comes to a hearing, it will be sufficient for The [13] Court to come in and say, we had a meeting on this date, 24 hours notice. We had a meeting on that date, 24 hours notice. This is what the city, you know, did. We have done this for years. We were in compliance with the law, as far as we knew.

MS. WADE: And then there is also a few years back where the Palm Beach Post took the city to court for a records violation, and the ruling of that Judge was, one day is fair, and one day equals 24 hours, so we have worked under the assumption of the 24 hour rule for, you know, quite some time.

MR. STEPHENS: Well, the Sunshine manual states that a special meeting has to be – you have to give at least 24 hour notice.

In this case more than actually 24 hour notice was given. I mean, they are saying 24 hour notice; but in essence, it was more than 24 hour notice, and I think the fact that it was posted on Channel 18 is important. I mean, I think that is really important, the fact that it was posted on there. Anybody who is concerned

about making it to a city council meeting, and they live within your city, could have gotten that notice.

MS. ILES: No. They are talking about the [14] May 10 meeting that we called a special city council meeting after the CRA meeting.

MS. RYAN:Try not to get confused, because I continue to do it. The special meeting that was called on the Bernard McKenzie contract, that was a meeting that was called Wednesday night at the council meeting for Friday morning at 10:00. There were two different meetings. I am constantly confusing this.

MS. WADE: What day was the May 10 meeting?

MS. RYAN:The May 10 meeting I believe was a Wednesday night after. The meeting was supposed to start – we put it on for 8:00 o'clock or after the CRA meeting, and the CRA meeting went a long time, and I remember we were, city staff, was waiting around and waiting around, and I think —

MS. WADE: I think she stopped the meeting and had that one and then went back to the CRA meeting.

MS. ILES: We stopped the meeting around 8:30, quarter to 9:00.

MS. WADE: We actually cut the meeting because of that advertisement.

MS. RYAN:My recollection is that the meeting didn't start until —

[15] MS. WADE: Well, we can clarify by looking at the tape.

MR. STEPHENS: The May 10 meeting?

MS. RYAN: Yes. Do you know what time?

MR. STEPHENS: The May meeting, it lasted – the CRA meeting lasted – it had to be about two hours and 45 minutes.

And the reason I say that is because the whole thing, I looked at, it was about two hours and 54 minutes, you know, so —

And this, the actual meeting didn't take very long, so I would say the meeting – so it was at least two-and-a-half hours, the CRA meeting. It was at least two-and-a-half hours.

MS. RYAN: I think it was closer to 10:00 o'clock.

MS. ILES: So then why did we call for the meeting to take place that Monday?

MS. RYAN: The mayor called for the meeting, and I don't know if —

MR. STEPHENS: It was posted at 3:40 on, I believe, May 9. I believe the posting as at 3:40.

MS. RYAN: P.m.

MS. ILES: Right.

[16] MR. STEPHENS: P.m., yeah, and the meeting actually —

So, I mean, you are talking about more than 24 hours.

MS. WADE: Okay. Now, madam chair, when the clerk faxed the notice to The Post, did The Post print it?

MR. STEPHENS: I haven't figured that out yet. I am going to call someone at The Post.

MS. WADE: Because if they got it at 3:45 p.m., then they had time to have it in the paper the next day, like they usually do.

MR. STEPHENS: Well, they definitely had time to have it in the paper, if the[y] wanted to do that. I mean, they could have posted it on their web site, if they wanted to.

MS. ILES: But are we responsible if they did not post?

MR. STEPHENS: No. What you have to do is – what you have to do is make an effort to give people notice; and, actually, the case law indicates that, you know, the press having notice is important, not just for noticing people that there is a meeting; but, also, it shows that you are not trying to have a meeting in private. [17]

MS. WADE: But do we pay for that posting?

MR. STEPHENS: Right.

MS. WADE: Okay. So when she cites that, we need to find out if we actually paid for that.

MS. RYAN: We don't pay for that, not for that.

MS. WADE: Not for special meeting?

MR. WILKINS: They have a section in the paper where they publish notices.

MS. RYAN: It is free. That part is free.

MS. WADE: That's what I wanted to know, if that part was free or if it was something out of the ordinary. What I am saying is, going back to the

history of the number of special meetings that have been called, it is different from when we are doing ordinances and all that kind of stuff.

MS. RYAN:Those have to be noticed.

MS. WADE: I just wanted to get that clear.

MS. ILES: I am trying to get some sense as to why we called the meeting on that Tuesday.

MS. RYAN:You didn't call the meeting. The mayor called the meeting.

MS. ILES: I understand. Why the mayor called the meeting. Why did the mayor on Tuesday call for the meeting?

[18] MR. BROWN: That's a question to me?

MS. ILES: Yes.

MR. BROWN: Okay. I was listening to the discussions. I believe, if I recall, we had adopted the contract, if I am getting the dates right. The city, and forgive me, I was kind of paying attention to what you all were saying. The city commission had accepted and agreed to retain Mr. McKenzie, I believe.

MS. RYAN: No, we are not talking about McKenzie.

MR. BROWN: Because here is what happened.

MS. RYAN: McKenzie was – that was at a council meeting, but this meeting happened before McKenzie.

MR. BROWN: Here is what happened. Here is what happened. You remember, I believe it is the time when we had the agreement with Viking.

MS. RYAN: Yes.

MR. BROWN: Right?

MS. RYAN: Yes.

MR. BROWN: And in order for the CRA to enter into a binding agreement, the city and the CRA have to meet on it.

MS. RYAN:Yes.

[19] MR. BROWN: And I believe what happened is, when I called the special meeting, it was we who approved the Viking written agreement at the city council meeting.

MS. RYAN:No, at the CRA meeting first because you called —

MR. BROWN: At the CRA meeting, and then this meeting followed that meeting?

MS. RYAN: Correct.

MR. BROWN: Because you needed, in order for a contract to be binding, because there was city property affected by the CRA agreement, we needed a city council meeting, so that this council could also approve the same contract.

MS. RYAN: Right. She wants to know why did you —

MS. ILES: I was just trying to get some sense of —

MR. BROWN: And the reason – I believe this is the meeting you are speaking of. The reason I did it is because if the CRA signs a contract, and the city hasn't signed a contract, particularly with all of their property and city property that was involved, then it is an incomplete process.

MS. RYAN:Right, and you want it done by May [20] 10.

MR. BROWN: We needed it. Right. In order for us, as a body, that's one of the things we agreed upon, all of us. In order for us to move forward, we needed both meetings.

MS. RYAN: Correct.

MR. BROWN: All right. If you would have had just the CRA meeting without the city council meeting, you would have had an incomplete process; and, therefore, not a legal subsequent agreement.

MS. RYAN: And so the issue, this is a question, was added on to the CRA meeting, or was it already listed on the CRA meeting?

MR. STEPHENS: It was an add on.

MS. RYAN:So it was added on to the CRA meeting, and so you called for a discussion meeting of the council, so it would be done on May 10.

MR. BROWN: Right, but remember, at the CRA meeting, obviously, we have had a series of discussions and negotiations regarding the CRA, the master developer dating forever, and when the council and the CRA enter into the agreement with Viking, yes, we had to have —

I called a special meeting so that that [21] contract that we entered, that you all entered at the CRA will be valid, because the city had to have a meeting to approve the same contract.

MR. STEPHENS: And I think, quite frankly, I think somebody was talking about sympathy earlier. I think if you can show to a Judge, and I think you have

to do it this way. I think if you can show to a Judge that way before anybody started complaining with the legislature and coming up with a bill and all this stuff, that the city invested a lot of time and a lot of money to make this happen and that other folks were the ones who went and started trying to do things behind the doors to shut this down.

And I think, really, I think if you can parade those people into the courtroom to say, I was working on this since this date, and so now, you know, now when you are trying to get all of this, you can't just rush and throw something. You are spending all this time, all this money, to get all this together, and then you got other folks working against you.

I mean; and, you know, the Florida [22] Constitution says that you cannot create a law that will affect just the City of Riviera Beach. So they spent some time trying to make sure that they got it where it affected only the City of Riviera Beach without hurting other folks. And so they were doing all these things to create this to hurt the City of Riviera Beach.

And I think you can show that, and I think when you show that, I really do believe that public sentiment will certainly change when they see that the city was doing all this stuff for months, if not years, talking about bringing people in and getting contracts and going about your business, and then all of a sudden you get some other folks who were supposedly political power house people getting involved and doing things to try to kill the process.

I think all of that is important, and I think all of that deals with whether or not the notice, itself, is reasonable. Everybody knew with any common sense

that you had to try to get something together before that bill was signed. I mean, we just have to be realistic.

MS. WADE: That's what I mean by the climate, Don. That's exactly what I mean by the climate.

[23] MS. DUMCOMB[E]: It shouldn't be our argument. I mean, it should be that we have the right to try to solidify a decision that we have made. I think when you start going into all that other stuff, it sort of changes what the real issue is.

We finally adopted one area with the CRA, and we just needed to solidify it, and we needed to get it over, because we had been working all this time with it.

MR. STEPHENS: Right. I don't think you can separate those issues.

MS. WADE: Wait a minute.

MR. STEPHENS: You can try, but I don't think you can separate what was the climate and all that stuff that was going on.

MS. WADE: The reason I am saying I am worried about the climate, you had a problem with the P and Z board with the same argument, and it made the most sense of all, but we did not get the vote, okay. So it is going to depend on – and the eminent domain issue is something that has been a global thing. People are complaining about they have no property, they are not vested, they are not affected, so it is going to – and so when we lay this out, one of the things —

[24] I know the reason I attended the meeting was that the governor was fixing to sign a bill that was brought up after we had started the process, okay, so I

didn't feel like I was shorting the governor or the legislature, because this was already in our toolbox. It was not put in the toolbox by the City of Riviera Beach, okay, and we had been working towards this for the last 15 years, not just a few years.

So, since we were this far in, and we have the invoices to show that there was ongoing work, and there was no reason in the world for us not to call a special meeting. We had called a special meeting before to get something finished.

MR. STEPHENS: Well, my point is that it wasn't that you all decided to try to rush this, just to rush to try to get something together. It was the fact that somebody was trying to do something to thwart the whole process.

MR. WILKINS:Mr. Stephens, the issue is not the motive for the meeting. The issue is whether the meeting was called in accordance with state law and regulations, and the facts are that we did, and it is irrespective of why we called the meeting.

[25] MR. STEPHENS: Right. Well, but what the law is, is that you have to look at the circumstances to determine whether or not it was reasonable.

You know, in other words, if you didn't have a deadline that was right there then —

MS. RYAN:Why call it.

MR. STEPHENS: — you should have called the meeting two weeks later or a month later and made sure that everybody got, you know, two, three weeks notice, so it is kind of hard to separate those things.

MR. WILKINS: Who makes the decisions whether it is three weeks long or a month long or a year long?

MR. STEPHENS: Yeah, but what I am saying is —

MS. DUNCOMBE: That's not the argument we need to make. Our argument is that we should make the argument that we had finally solidified one side of this contract, and we need to go on and solidify the other side of it.

MR. STEPHENS: Right.

MS. WADE: That doesn't make you rush it.

MS. ILES: But I think – go ahead.

MR. BROWN: I think it is also important to [26] point out, and it is important that we don't allow them to back us into this corner.

The fact is, is that when this council selected Viking as the master developer, there was a contractual obligation of some type with Viking, and the fact is, is that even though we had this meeting, and we reduced that contract, or we entered into one of a series of contracts that will eventually be executed with Viking, that was not the first contract we had with Viking. Because when this council selected Viking at that meeting, there is no one that can legally argue that the city and the CRA was contractually bound and that Viking was not bound and that Viking was not the master developer. So—

MR. STEPHENS: Right.

MR. BROWN: — when the governor and all these other people claim that we rushed to enter into a contract with Viking and that that contract only came

into place on May the 10, we can't let them lead us down to that track, because the facts are, no, we had a contract on the night when this council voted them, number one.

MR. STEPHENS: Right.

MR. BROWN: And if you don't believe that, if [27] this council had told Viking, we changed our mind, let's watch Viking walk in here with ten lawyers to sue us, or if a month later if Viking says, we are leaving, and this council and city would have said, well, no, if you leave, that's going to cost us money, we could have sued Viking, that's number one.

Number two, although I understand what you are saying as well regarding the practical [e]ffect of in court it helps that if you can show the Judge what the big picture was, because there seems to be some room in these, this area of the law that talks about, okay, let's look at why the meeting was held.

MS. RYAN: That's correct.

MR. BROWN: My second point is, and it is tied in to what you are discussing and what everyone else has mentioned here.

We need to paint the picture and look at it, if we haven't already, the connection between Mr. Lozman, the Pacific Foundation, the efforts from the governor and the legislatures and all of the local people here who are working together to try to stop a process that we have been working on since 1999.

[28] And I think that furthers your point when you say that we can paint the bigger picture, because the reality is that at this hearing, if we are able to pain that picture and point out how these people are

working together, I don't know if you have checked to see whether Lozman is tied to the Pacific Foundation, I don't know, but my suspicion is all of them are working together.

When you look at the Attorney General's office, apparently there are people from FDLE walking around. The governor said he was going to refer this issue to the Attorney General's office to see if we violated the Sunshine.

You know, if the governor or the Attorney General calls the FDLE office and says, I want you to look into Riviera Beach, so now they get FDLE people walking around, and these same people, Lozman and the rest of them, Ward, are walking around saying well, you know, FDLE is looking into Riviera Beach. It is all a part of the same scheme.

So we need to take – you need to figure out, one, how far we need to go to determine what the connection is, if any, between these groups. Are they working together? Who is funding them? Who [29] is funding Lozman? If there is a single source. That's number one.

And two, find out if they have met with people from the A.G.'s office, or the governor's office, or the rest of them, and are they all working together, and if that's the case, let's expose it soon, so that the public really understands what they are trying to do.

MR. STEPHENS: Right. And I agree. I think one of the things you have to do, and that's why I am saying, you really can't separate certain things. I think that The Court has to see the picture.

I mean, I just believe The Court has to see the whole picture, because I think if anybody looked at the whole picture, they would have to conclude that this is unfair to the City of Riviera Beach, what is going on. That's just what —

MS. WADE: Do we know if Lozman is a registered voter anywhere?

MR. STEPHENS: No.

MS. WADE: Because his front yard is water. He lives at the marina.

MR. STEPHENS: All we have done so far, and I [30] think that's why we are here, to see exactly what the council wants done. But all we have done so far is file a motion hoping to get rid of certain claims but realizing the issue of the notice claim is not going to go away on a motion, at least certainly not on a motion to dismiss, but hopefully some of the other issues will go away.

MS. WADE: Can we find out where he is registered? I don't think it is here.

MR. STEPHENS: I think we can send him some discovery to find out, ask him all sorts of questions and try to get other information.

MS. ILES: But how much difference would that make? Does he have to be a resident before he can file a lawsuit against us?

MR. STEPHENS: Well, I think he should have an interest. Obviously, he rents from the city.

MS. DUNCOMBE: He rents from the city?

MR. STEPHENS: I think he has enough interest in this lawsuit to get past on that issue, because he – I mean, he is – he rents. He has a contract with the city, I assume.

MS. WADE: I understand he has a contract with the city, but my point is, like Mike was talking about the ex pose.

[31] He has caused trouble before, okay, and is he a pawn that's just being moved around? Is he a registered voter? Okay. He is definitely not a property owner, because he is renting and living on the water. His front yard is water, his backyard is water, and his side is water.

Okay. He lists his address as 200 Blue Heron, I mean, 13 Street, but that's my address. That's the marina's address, you know.

So, and then, as Michael asked, who funded it, and I think it is a big game to Mr. Lozman, okay, because of the things that he rallied up in – where was it?

MR. BROWN: South somewhere.

MS. WADE: South Miami or somewhere, and it is a big game to him, but is he – you know, what are his motives? Is there any way we can kind of point at some of the motives?

MR. STEPHENS: I think before you do that you got to find out what is going on.

MR. BROWN: Well, then that's really the question to me, for us is, do we want, and I suggest to the council, direct you or to spend some money to do some background investigation on Lozman, his connection, and the connectivity of [32] all of these

groups together. Not, I mean, not a whole treasury of the city but from –

And, look, not a big brother from the standpoint, oh, we want to investigate who these people are.

MR. STEPHENS: I think a private investigator can find those things that you are talking about.

MR. BROWN: Let's find out who they are. Let's find out if, because I suspect they are working together. Find out if he is a pawn. Somebody is funding him.

MS. RYAN: But my question is, how is that, and that's fine, but how is that relevant to the lawsuit?

MR. BROWN: It is very relevant.

MS. RYAN: Hold on. Even though the Judge looks at the circumstances, they are still looking at the four corners of this complaint.

This is not a frivolous lawsuit. I don't think it is frivolous. I think we can win, but an argument can be made, and they made the argument that the meeting should have had at least, should have had more than 24 hours notice because of the type of meeting that it was.

MR. BROWN: What about if you were the Judge [33] and you are sitting there and they walk —

MS. RYAN: I would not bring in that testimony.

MR. BROWN: Well, let me finish my point. If you were the Judge and you were sitting there, and I guess you answered it. If I was able to explain to you well, wait a minute, Judge, let me tell you what is really happening here.

First of all, we have had these type of meetings. This is the standard proceeding. We have had emergency meetings before. There is nothing out of the ordinary about our process here, and here is what is at work, and here is the context in which the meeting was held.

Now, even if the Judge doesn't let it in, the fact that we find it out, at least it helps us in preparation.

MS. RYAN: Sure.

MR. BROWN: For this lawsuit.

MS. RYAN: And for the next one.

MR. BROWN: And other lawsuits, because these —

We need – what my reason – I really wanted to be here today is so this council understands, at least in my opinion, we need to understand that [34] these people are attacking us. They are trying to destroy everything we have worked on.

And, even though this is just the first step in this lawsuit, there are some very powerful people from the government down to the legislature, and they all think the same thing, whatever his name is, who basically are here to try to destroy us, and we need to understand that. We need to use every reasonable tool that we have to find out who they are, what we are up against, so that we can map our strategy out or else we will be pushed out to Okeechobee, Clewiston, and beyond.

MR. STEPHENS: Right, and I think, basically, I mean, I think both of you are right, actually. I mean, I think that you have to have information so that you

know who you are dealing with, even if you don't use it in court, but Ms. Ryan is right.

In Court what really is important is what you all were thinking when you set the meeting on their date at that time.

I mean, that's what The Court is going to look at to make a determination of what is reasonable, what is reasonable from your perspective, and I think what is reasonable from your perspective was the fact that you had been [35]going through all these contracts, and you had been doing all these things, and there was no way that you weren't going to work your butt off to the last minute to finalize this last piece of the puzzle to get it done.

And I think you all are right, and so I think both of you are right, but if you are dealing with somebody in a lawsuit, I mean, you know, we have normal lawsuits. We want to find out everything we can about the person who is suing our client. We want to know everything about it. I mean, we know whether they are in debt and all that kind of other stuff.

MS. WADE: I think it would help to intimidate the same way as FDLE is coming to my house. I am wondering if my lines are tapped or whatever. I think they should be questioned by some of our people on a legitimate pay scale basis so that they can feel the same kind of unwarranted heat that we are feeling, and I am going to caution that the city has been there before; and, as I said, it is not right now who is right. It is the climate.

We watched an entire council over a two year period being oust, black and white. We watched an [36]

entire administrative staff being taken out, black and white. We watched Newman, the FBI agent that was sent here for two years after the last election was over, stand and say that they, after the election, they found no corruption in the City of Riviera Beach.

So, I am saying, it is the climate. We can go in there and be as right as right can be, but if that Judge is already preconcluded, you got the governor's hand in this, or supposedly in this, because all we have got is hearsay that his hand is in it. You understand what I am saying? You got FDLE knocking at my door.

MR. BROWN: He called my name, buddy. The governor called my name.

MS. WADE: He called your name? What I am saying, I am very, very – I am not scared, but I am very cautious. I have seen this city right, dead right.

Okay. And as a result of that, the city – now, if we lose this process that we have got over here, we can look back and see what the city lost in that process when they took out that council and the city manager and staff, okay.

Ibis, Caloosa and Iron House, they were all [37] in the annexation map with the City of Riviera Beach. Okay. We have none of it. Okay. As we speak today, we have none.

If these people are successful, then we are going to have the same right or worse on our eastern shores. So, it is very important that we understand the history, and that's why I say it is very important that you form or we formalize some kind of strategy that's going to let the Judge know that it is not the first time, okay.

And the city ends up losing when you get people like Tina White that's only interested in getting her a job. She wants to pick up trash. She doesn't have a pickup truck. She wants to do hurricane roofs. She doesn't have a hammer to nail. You understand? She wants to do the Jazz Festival. She can't sing an [sic] tune, but she has come to this city and ask for all of these things. I am sounding funny, but she is one person. Okay. Now she is on the war path.

We have a guy that works for Waste Management. He is now sending us what was wrong with Waste Management's contract.

If they all prevail on incorrect information because of the climate, the city loses, and when [38] we are talking about identifying the people who is behind it, I am trying to give you as much information I have in an open forum that we can start checking on.

MR. BROWN: Ms. Wade, I agree with most —

MS. WADE: I know it is hard for you to say, Michael.

MR. BROWN: What I wouldn't – I don't know the specifics of the individuals that she is – I mean, I know who the people are, and Ms. Wade expresses her way in a certain way, and I have mine, but do agree with her, and we are 100 percent on the same – this is serious stuff, and what – this is the first step, and I agree, these people are trying to destroy everything that we have done. And when Ms. Wade talks about Iron Horse and Caloosa, most people don't understand what you are talking about, Ms. Wade, in that those areas out west that were in the annexation area of Riviera Beach, that all of these forces that have

worked together over the years and circumstances that happened here in City Hall came together and deprived this city of those very valuable assets.

And, if we don't understand, we must [39] understand in this bound, that this fight goes on, and this is the Alamo, as far as I am concerned, and this is serious stuff.

MR. STEPHENS: And that's what I am talking about when I say the big picture, and that's why I say, you can't try to fight a narrow, legal issue. If you do, you are going to lose.

MS. WADE: That's right.

MR. STEPHENS: I mean, that's all I am saying to you, and you can say well, I don't want to bring this in here, but it is all in here.

I mean, you got to put it together, and you got to put it together, and you got to paint it broad so that they will know what you all were thinking.

MS. ILES: And as we are all – we are here to hear the statement in our community. We got to call a spade a spade, and we can sit here, and it is going to be uncomfortable, but the facts are the facts, and we need to put them out there, and it wasn't the folks sitting on the stairs that lost that property out there. It wasn't the folks outside. It was the folks sitting on this dais that lost us Caloosa, Iron Horse, and all of those things out there.

[40] I don't have anything to say about the governor. The governor will do what he feels like he needs to do. But, the bottom line for me is that this community needs to move forward, and irrespective of what anybody in Tallahassee does, and I will use my

analogy here, and it probably will make some people uncomfortable, but so be it.

You can't tie my hands, put a noose around my neck, put me on a box and then wait for me to sit there and wait for me to kick that box out from under me, okay.

I got to try to figure out how to get that noose out from around my neck, and it is about self preservation. It is about moving the city forward. We have home rules. We have to make the decision, and they are not going to be popular, because people don't want to change, you know, or people are afraid of change, suspicious of change, and once it occurs, and it is a good product, then folks, you know, yes, I was with them, but yeah, but she was up beating us up.

But we need to have all of the things that could possibly be coming at us, all of those avenues, no matter how they are labeled, you know.

MS. DUNCOMBE: Madam chair, may I offer a [41] consensus; and, like you say, the council previously helped cause a lot of the problems of that era. It is perceived now that we are in disagreement, okay. Let us take this opportunity to send one message. Whatever goes on in our home is in our home, but when we step out the door, we have to step out together.

Let me offer this consensus, that we put as much money behind this case as we have to. We have spent money on other things that we have disagreed together on and selected, but we need to make one solid statement. Whatever our disagreements are, we are

not going to allow you to take our disagreements with each other and beat us up with it. Okay.

So, I would like to offer up a consensus that we spend whatever. If you need a private investigator, whatever you need. If you need somebody to shadow every name that's on this document, I ask for a consensus that we spend those dollars and get it done, so we send one message. This is our house, and we are going to stay, and there ain't none of them going to run us away.

MR. STEPHENS: And this is – this is just a [42] small part of the fight, you all are right, that they are trying to attack you on both sides with two different things, but really they are trying to fight the same thing; and that is, they are trying to stop this development, and that's the bottom line.

They are saying Sunshine violation, but this has absolutely nothing to do with that. What it really has to do with is they are saying this is one mechanism to try to void the contract to make the other bill binding on you.

MS. ILES: Okay. Let's try to get this one to some kind of end, because we have got a second one we need to —

MS. RYAN: Which should be brief, because of this one, the discussion.

MS. ILES: Do we have a consensus of what Ms. Wade is saying? I guess it is not on so —

MR. JACKSON: I think what Ms. Wade says is right. We do have to beat this thing, and whatever it takes, I think we should do it.

MS. RYAN: Okay.

MS. DUMCOMBE: Okay. The only thing I have to say is that the only way you can have a consensus and really show that you have it, [43] council can't be in court fighting on enough. We need to settle that situation and get it out of the way. I don't care what you feel. That's the only way you can show that we have a – and, listen, one thing you don't ever have to worry about me in terms of whatever happens in terms of what decisions we make. I am not going to ever go out there and knock anybody.

I am from a family of 13, and we never agreed. We didn't deal with sister-in-laws, brother's in-laws, nieces and nephews. Whatever we said, that was it, and we had lot of disagreement, and that was reasonable. So I, you know, that's the only thing I have to say. You are going to have to settle with what you have going on with yourself. You have got to settle that.

MS. WADE: When you say what we have going with ourselves, are you referring to the case with the mayor?

MS. DUNCOMBE: Yes.

MS. WADE: I am not going to discuss that matter. May I finish my statement? I am not mad, but what I am saying though, my recommendation, Ms. Duncombe, is that the City Attorney talk to [44] you and give you the real info on that case, so that you will have a real complete understanding from the real legal point of it.

I am not going to discuss it here or debate it with you, but – and I agree with what you are saying. Looking at it from the outside looking in, it looks bad.

So now that you are on the inside, I would highly advise you to please talk to the city attorney. The case has ended, unless the mayor thinks it is not. There is a decision on the case. So you need to talk to the city attorney so that you will have a better understanding.

MR. STEPHENS: So we won't have a Sunshine violation while we are here, I think you will have to be careful.

MS. RYAN: Don't say anything else, please.

MS. ILES: Okay.

MR. STEPHENS: It is part of the strategy, I understand.

MS. ILES: We have a consensus to move forward on this particular lawsuit and to do whatever we deem necessary, that means collecting information about what is going on so we can be better prepared.

[44] MR. STEPHENS: Absolutely.

MS. ILES: And then to try to formulate our strategies.

MR. STEPHENS: Right.

MS. ILES: Even if we have to go to court, if it is not dismissed. Okay.

* * *

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10550

District Court Docket No.
9:08-cv-80134-DTKH

FANE LOZMAN,

Plaintiff - Appellant,

versus

CITY OF RIVIERA BEACH, a Florida municipal corporation,

Defendant - Appellee,

MICHAEL BROWN, an individual, et al.,

Defendants.

Appeal from the United States District Court for the Southern District of Florida

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JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: February 28, 2017
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna Clark

Florida Statute Annotated § 871.01

Disturbing schools and religious and other assemblies

Effective: June 20, 2006

(1) Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever willfully interrupts or disturbs any assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.